

The University of Chicago

THE RÔLE OF THE BAR IN ELECTING
THE BENCH IN CHICAGO

A DISSERTATION SUBMITTED TO THE
FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

1938

By
EDWARD M. MARTIN

THE UNIVERSITY OF CHICAGO PRESS
CHICAGO, ILLINOIS
1936

THE UNIVERSITY OF CHICAGO PRESS
CHICAGO, ILLINOIS

THE BAKER & TAYLOR COMPANY
NEW YORK

THE CAMBRIDGE UNIVERSITY PRESS
LONDON

THE MARUZEN-KABUSHIKI-KAISHA
TOKYO, OSAKA, KYOTO, FUKUOKA, SENDAI

THE COMMERCIAL PRESS, LIMITED
SHANGHAI

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PREFACE

There is no problem confronting the Bar of greater importance and concerning which more careful and conscientious thought should be given than the selection of the judiciary. It would appear from examination of the current law journals and literature that the Bar and other associations vitally affected by the caliber of judges are awakening to the necessity of material changes in the elective system of the judiciary. The hue and cry is "Take the judges out of politics, remove the Bench from political influences, provide an independent judiciary."

The Chicago Bar Association for many years has struggled against the influence and power of political organizations whose grip on the judiciary is tenacious and deadly. Some of the members have felt that the efforts have been futile. Others are convinced that while the results have not been all that were hoped for, the struggle has not been in vain and must go on. That we have exercised some influence cannot be doubted.

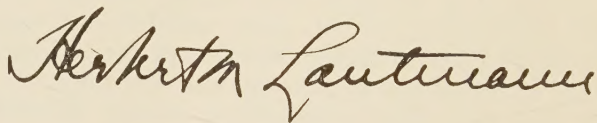
Realizing the vicious imperfections of the present method of selecting the judiciary, concerted efforts are being made to work out a new system of judicial selection for Chicago which it is hoped will be submitted in the very near future for public discussion. From this point further efforts to educate the public on the necessity for a change must be carried on relentlessly and fearlessly until the shackles of partisan politics which destroy the independence of the judiciary are shattered.

Edward M. Martin has gathered together in this book exceedingly valuable data as the result of an exhaustive research into the historical facts pertaining to the election of judges and the influence of the Bar in judicial elections.

It is hoped that every member of the Bar will not only find this book interesting and instructive but that it will be read with such discriminating attention as will enable each lawyer to comprehend the seriousness of the problem before the Bar and to be ready to perform his full duty in formulating, adopting and forwarding the program for improvement of judicial selection now being developed by the Chicago Bar Association.

While the Bar Association does not at this time adopt the conclusions reached by Mr. Martin in this book (he having undertaken the work independently) it is, nevertheless, a most valuable work in that it furnishes material for the solution of the problem whether or not the majority of the Bar agrees with the conclusions reached

by the author. We do not hesitate, therefore, to give recognition to the accomplishment and the invaluable contribution made by the author to the Chicago Bar Association in searching out and supplying material so necessary in the consideration of its general program now going forward.

A handwritten signature in dark ink, reading "Herbert Lautman". The script is fluid and cursive, with the first name "Herbert" and last name "Lautman" clearly distinguishable.

President, The Chicago Bar Association.

April 22, 1936.

FOREWORD

The present study by Mr. Martin is an effort to describe and evaluate the influence of the Chicago Bar Association upon the election of judges in Chicago and to present a constructive suggestion of an alternative procedure. The Chicago Bar was one of the first groups to concern itself with the selection of judges and the story which Mr. Martin tells of its efforts during the past six decades to influence the process of judicial selection presents an illuminating history and analysis.

The difficulties which have confronted Chicago are generally characteristic of every large metropolitan community. While there has been much discussion among lawyers regarding conditions and remedies, the subject has escaped comprehensive analytic treatment until now. By combining history, description and evaluation, Mr. Martin has sought to present the basic factors of a situation local to Chicago but of interest to all who seek to improve present modes of judicial selection. The subject is interesting not only to lawyers and students of government but also because of its implications to the laymen who come into court.

To the members of the Bar and to citizens generally, the subject presents a situation requiring definite political action. For the legal profession to arrogate to itself too much responsibility in the matter of selection may lead to popular repudiation if the Bar seeks to play any part in the selective process. Yet in seeking a solution the general public looks to the members of the Bar for leadership and guidance. The members of the Bar, in turn, seek the intelligent co-operation of laymen. The Bar's system of participation in the selective process has reached the point where it must be reconsidered in the light of the selective system itself.

The Chicago Bar Association has realized this and has been searching for a substitute. This study should help in its formulation of an acceptable plan. Mr. Martin brings the several elements of the problem to focus on the general question, namely, In the light of its own experience and that of other communities what can Chicago do to improve its system of judicial selection? When the Association has evolved a plan it will then need widespread interest and united support in translating its plan into legislation. In the process of public education which must precede such action, this treatise will supply evidence showing wherein the existing procedure has been strong and wherein faulty and will show the whys and wherefores of proposed changes.

No greater responsibility confronts the American Bar, and particularly the organized Bar in metropolitan areas, than that of safeguarding the integrity and competence of the local courts into whose care are so largely committed the daily protection of life, liberty and the pursuit of happiness.

This volume is one of a series of studies of the Chicago metropolitan region. Important in this respect was the prior inquiry of Dr. Albert Lepawsky dealing with *The Judicial System of Metropolitan Chicago*. Another related study was that of Dr. Carroll H. Woody on *The Chicago Primary of 1926*. These and other related studies are the result of an organized effort to understand and interpret the emerging political problems of our great metropolitan center.

Charles E. Merriam

Chairman, Department of Political Science,
The University of Chicago.

May 8, 1936.

IN APPRECIATION

I am under great obligation to many friends and associates who have generously co-operated in the preparation and publication of this study.

The Chicago Bar Association, through its Board of Managers, individual officers, members, and staff, provided access to official files, statutes, legal history and other materials. Their co-operation and personal interest enabled me to add many items of information which would otherwise have been inaccessible. In particular I am indebted to Messrs. John R. Montgomery, Francis X. Busch, Charles Center Case, Charles P. Megan, Albert E. Jenner, Jr., Henry A. Gardner, and Edgar Bronson Tolman for friendly counsel and to Mr. Herbert M. Lautmann for writing the preface. Mr. Willard L. King, the Librarian of the Association, generously aided in making publication possible. By their personal co-operation Mr. Clarence P. Denning, the Association's executive secretary, Mr. Van Clement Winans, assistant executive secretary, and Miss Alice Elmstrom of the staff, facilitated my study in many ways. To each of these persons I offer my thanks and express the sincere hope that the publication of this material will assist the Association in working out its plans for improving the methods of judicial selection in Chicago.

I am deeply obligated to individual members of the Union League Club who have counselled and aided me in various ways. To the late Harry Eugene Kelly I am irreparably indebted for sound advice and for an insight into the actualities of the political process. Likewise, Mr. Charles Scribner Eaton gave me guidance in deciphering the local political maze. Mr. Max Murdock, now chairman, and the several members of the Club's Public Affairs Committee, during the years I have been their secretary, have shown a generous interest in this project.

To members of the Political Science Faculty of the University of Chicago I express my gratitude. The study was made under the direction of Professor Charles E. Merriam, whose insight into this and related fields gave me guidance at many points. I thank Professor Harold F. Gosnell for thoroughly reading the manuscript and for many valuable suggestions. Dr. Albert Lepawsky also read the entire manuscript and aided me in clarifying important points.

To Mr. Walter F. Dodd of the Chicago Bar and Mr. Herbert Harley, secretary of the American Judicature Society, I hereby acknowledge a sense of gratitude difficult adequately to express.

From the inception of my inquiry Mr. Dodd has given me the benefit of his friendly interest. He read the entire manuscript and his comments enabled me to avoid errors.

In addition to assistance from the voluminous literature on the subject which Mr. Harley has published in his *Journal* through the years, I am especially indebted to him for his co-operation in reading the manuscript and in making important suggestions regarding facts and interpretations.

Dr. Herbert A. Toops, of Ohio State University, gave me much helpful counsel concerning statistical evaluation of data. Mr. Groves M. Kilbourn gave me the benefit of many suggestions concerning style and treatment.

In a very special sense I acknowledge my obligation to my wife, Ethel Austin Martin, whose interest in this venture has been one with my own from the beginning.

For errors of fact, interpretation or judgment I am alone responsible. Every reference to particular personalities is of course to them in their capacities as public officers or as participants in a public process upon the efficient functioning of which the welfare of the community so much depends.

Edward M. Martin

May 21, 1936,
CHICAGO, ILLINOIS.

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PART I
THE PROBLEM IN PERSPECTIVE

CHAPTER I

INTRODUCTION

THE CITIZEN'S STAKE IN JUDICIAL SELECTION

In a democracy the stability of the state and the welfare of the individual citizen depend in large measure upon the impartiality and efficiency with which justice is administered. For, in the contacts between citizens that are regulated by law, justice substitutes the notion of right for that of violence. Furthermore, the moral force and rightness of justice depend in no small degree upon the integrity and capacity of those who preside over the nation's courts of law.

Every citizen has a triple stake in the selection of well-qualified judges. As a member of the community, he (1) derives a general benefit from the social stability which the fair and efficient administration of justice assures; (2) desires impartial treatment in case he is subjected to judicial authority; and (3) is obligated personally to participate in the process of judicial selection where judges are chosen by vote of the people.

The individual citizen's interest in a well-qualified judiciary may become a highly personal matter. His personal liberty, his reputation, his family or his property may suddenly fall under the authority of a judge. His innocence or guilt and freedom or incarceration may be decreed by a judge. The custody of his children, the binding or severing of a marriage contract, the ownership of property, or the enforcement of a business agreement may be decided by a judge. Furthermore, the equity of a tax levy which the citizen must pay, the constitutionality of a statute which he must obey, the legality of an official act or policy which affects his interests, or the enforcement of official compliance with a legislative order, may be subject to judicial action. In fact, few public measures escape "the ordeal of judicial review." Thus in many ways the citizen is vitally interested in the caliber and competence of those who not only wield authority over him but also protect his individual rights and liberties.

THE EVOLUTION OF THE ELECTIVE SHORT-TERM JUDICIARY

In Colonial America, the administration of justice was at first executive and legislative. When judicial justice began to emerge the presiding magistrates were either appointed by the governor or commissioned by the legislature. Tenure during good behavior was the rule in a majority of the original states, even before the federal government adopted the appointive, life-tenure plan for

judges in 1789. The federal plan was adopted by Pennsylvania (1790), Vermont (1791), Kentucky (1792), and Tennessee (1796).¹ However, in four states—New Jersey, Rhode Island, Connecticut, Georgia² (and Pennsylvania prior to 1790)—judges were commissioned by the legislature for short terms.³

The principle of legislative supremacy marked the original constitutions of Ohio (1802), Indiana (1816), and Illinois (1818) in that the legislatures were empowered to appoint all judges. In Indiana and Illinois the tenure was for life, but in Ohio the term was limited to seven years, "if so long they behave well." The Ohio convention had considered and rejected the appointive, life-tenure plan adopted by Tennessee a decade earlier.⁴ The action of Ohio foreshadowed the movement that developed two decades later to democratize the courts and to bring the selection and removal of judges within the direct control of the people.

The shift from the federal plan to the elective, short-term system of selection has been attributed to the popular hostility which developed toward some strong life-tenure judges who, in spite of the unpopularity of English law after the Revolution, obstinately adhered to English rules and precedents.⁵ Popular hostility toward a permanent judiciary was accentuated by the increased authority of the courts derived from the decision of the United States Supreme Court in *Marbury v. Madison*.⁶ Rendered in 1803, this decision invalidated for the first time an act of Congress and established the authority of the courts to determine the constitutional validity of executive and legislative acts.⁷ This prerogative was construed to be against the interests of the people, and in several states its assertion led to reprisals against the judges who thus dared to thwart the popular will.

The first half of the nineteenth century witnessed a rising tide of sentiment against the appointive, life-tenure judiciary. To the Jacksonian democrats, life-tenure tended to establish judges as a

¹F. N. Thorpe, *Charters and Constitutions* (Washington: Government Printing Office, 1909), pp. 1270, 3419, and 3765, respectively.

²Georgia's first constitution (1777) provided for direct election of judges, but changed to legislative appointment in 1789. Address of E. Smythe Gambrell to Conference of Bar Association delegates, American Bar Association, 1933.

³W. S. Carpenter, *Judicial Tenure in the United States* (New Haven: Yale University Press, 1918), p. 156.

⁴F. R. Aumann, "Selection, Tenure, Retirement and Compensation of Judges in Ohio," *Cincinnati Law Review*, V. (1931), 408-11.

⁵Roscoe Pound, *Criminal Justice in Cleveland* (The Cleveland Foundation, 1922), p. 600.

⁶(1 Cranch, 137.) Although the Supreme Court officially established the doctrine of judicial review in this case, the principle had been recognized in earlier cases. See A. C. McLaughlin, *A Constitutional History of the United States* (New York: D. Appleton-Century Co., 1935), pp. 305-17, for a review of precedents and the issues involved.

⁷Within fifteen years every state except Rhode Island had recognized the principle of judicial review (Carpenter, *op. cit.*, p. 159).

privileged class and to create a judicial oligarchy. Objection was also raised against the plan of legislative appointment of the judiciary. In the Pennsylvania constitutional convention of 1838, for example, unlimited tenure was declared to promote carelessness, indolence, and tyrannical feelings on the part of judges, and to beget a want of courtesy toward the Bar and the people. Furthermore, it was asserted that appointment by the legislature or governor made the judiciary subject to spoils politics.⁸ In Ohio it was asserted that the legislature had become "a mere political arena, embittering the feelings of party spirit and corrupting the pure fountains of justice."⁹

The Jacksonian democrats crystallized the reaction against the judiciary as then constituted. Holding that sovereignty is vested in all the people and that government would fare better by allowing as little power as possible to pass from the people's hands, the Jacksonians applied the elective principle to the major offices in the public service. By substituting popular election and fixed tenure in place of appointment during good behavior, the Jacksonians argued that the courts would be made responsive to public opinion and that thereby the administration of justice would be liberalized.

Under the spell of this doctrine, the principle of popular election and fixed terms became the prevailing mode of judicial selection. In 1830, Alabama followed Ohio's earlier action (1802) of adopting a limited term for judges. Between 1830 and the Civil War, twenty-one states had limited the tenure of their judges to a term of years, and the popular election of judges was provided for in the constitutions of twenty-two of the thirty-four states established at the beginning of the Civil War. Popular election and short tenure have been the rules in the fourteen states established since that time.¹⁰

⁸*Debates, Pennsylvania Convention* (1838), X, 211.

⁹*Debates, Ohio Convention* (1850), I, 86. Cited by Aumann, *op. cit.*, p. 409.

¹⁰The thirty-seven states in which the elective, short-term principle is now operative and the dates of its adoption are: Alabama (1830); Arizona (1912); Arkansas (1836); Colorado (1876); Florida (1845); Georgia (1898); Idaho (1890); Illinois (1848); Indiana (1851); Iowa (1857); Kansas (1855); Kentucky (1850); Louisiana (1852); Maryland (1851); Michigan (1850); Minnesota (1857); Mississippi (1914); Missouri (1850); Montana (1889); Nebraska (1867); Nevada (1864); New Mexico (1912); New York (1846); North Dakota (1889); Ohio (1851); Oklahoma (1907); Oregon (1857); Pennsylvania (1850); South Dakota (1889); Tennessee (1853); Texas (1876); Utah (1896); Virginia (1850); Washington (1889); West Virginia (1862); Wisconsin (1848); Wyoming (1890).

In 1898 Georgia abandoned legislative appointment in favor of popular elections. Georgia thus completed the cycle of the various methods of selection. After adopting the elective principle in 1777, she abandoned it in 1789 in favor of legislative appointment, then substituted executive appointment for that method in 1868, and revived legislative appointment in 1877, and finally returned to direct elections in 1898 (E. Smythe Gambrell, *op. cit.*). See p. 343 for current developments in Georgia.

THE SEQUENCE OF JUDICIAL SELECTION IN ILLINOIS

The sequence of judicial selection in Illinois paralleled this trend. The first constitution, adopted in 1818, provided for the legislative appointment of judges and for tenure during good behavior. Eight years later the first break in the system came when the office of justice of the peace was established in each county. These justices were to be elected for four-year terms.¹¹

The second constitution, adopted in 1848, completely abandoned the appointive, life-tenure principle. The third constitution, enacted in 1870, and still in effect, continued the elective, fixed-tenure plan for all judicial offices, excepting the justices of the peace in Chicago. These positions were given fixed terms, but were made appointive by the governor, with confirmation by the senate, upon the recommendation of the judges of the courts of record in Cook County.¹²

The elective principle was extended in 1905 when the Municipal Court of Chicago, with its elective judges, superseded the appointive justices of the peace. The elective principle was further applied in the adoption of the direct primary in 1908¹³ and in the enactment of unrestricted suffrage in 1919. The only refinement of popular control which Illinois now lacks is the device of judicial recall. Thus, at the present time, with the exception of appointments by the governor to judicial vacancies where the unexpired term is less than one year, every judicial office in the state is filled by election.

CHANGES AFFECTING JUDICIAL SELECTION

The advocates of the elective, fixed-term principle could not foresee the many changes that were to occur in American life during the second half of the nineteenth century and the far-reaching effects that these changes were to have on the selection of judges under that system. During this period the entire legal system was subjected to the influence of new forces. The rise of industrialism, urbanism, and spoils politics also created new conditions with which that system of judicial selection was not designed to cope.¹⁴

In 1868 Mississippi adopted the appointive system, but abandoned it in 1914; in 1864 Louisiana adopted the appointive plan, but returned to popular election in 1904; in 1868 Texas adopted the appointive system but abandoned it in 1876.

In 1934 (see p. 336) California substituted an appointive system for its state supreme and appellate courts in lieu of the elective plan which had been in effect since 1849. County judges are still elected, however.

¹¹*Laws of 1827*, p. 255.

¹²*Constitution of 1870*, Art. VI, sec. 28.

¹³For list of Illinois' succession of primary laws see Merriam and Overacker, *Primary Elections* (1928), p. 368.

¹⁴C. E. Merriam, *American Political Ideas*, p. 152.

Discussing the operation of the elective short-term system, Pound says:

In rural pioneer America the elective short-term judge did not work badly Today judges in rural jurisdictions chosen at the polls and for relatively short terms are, on the whole, satisfactory. But the elected short-term bench has not achieved what its adherents expected of it, and has achieved some other things which have a bad influence upon the administration of justice.¹⁵

In urban centers the administration of justice encountered many forces that were either weakly active or practically nonexistent in rural areas. Industrialism brought new legislation and a tremendous increase in the volume and complexity of litigation. The growth of large cities was accompanied by increases in crime and overburdened courts. Both circumstances necessitated the elaboration of the existing judicial machinery, which was simple in structure and had been designed to suit rural conditions. New tribunals were created and the number of judges in the existing courts was increased. The problem of selection thus came to mean not only the choosing of many judges but also the exercise of discrimination by a large and heterogeneous electorate.

Another crucial phase was the rise of a professional class to manage the political party systems and to manipulate the affairs of government. Especially was this true in large centers of population where rich inducements existed for such activity. The complicated cycles of elections, the long list of public offices to be filled, the preoccupation of the voters with private affairs, and the increasing inertia and disillusionment of the electorate were conditions which facilitated the success of these professionals' efforts. As one of the group of offices filled by popular suffrage, the judiciary naturally fell under the jurisdiction of these professional political managers.

THE "AGONIES OF THE METROPOLITAN BENCH"

The problem of judicial selection in metropolitan communities has been succinctly stated by Herbert Harley¹⁶ as follows:

. . . . In the larger cities . . . only the more fortunate judges . . . are assured of re-election. For many of them it is a cruel choice between short careers and activities on and off the bench which will keep them in the public eye. . . .

Another matter could be called the agonies of the metropolitan bench. . . . All really sophisticated lawyers know that popular election of judges in the largest cities has been steadily lowering the quality of personnel for many years and that the lower stratum is nauseous. Direct nomination must be blamed measurably for this, but the rapid growth and increased complexity of urban life and politics is a formidable factor. . . .

The fact that we have only smouldering gossip and impersonal criticisms

¹⁵*Op. cit.*, p. 599.

¹⁶Secretary of the American Judicature Society and formerly assistant to the chief justice of the Municipal Court of Chicago.

of the bench in the large cities is due in part to the impossibility of speaking freely, or of getting assured facts, except through organized effort. There has been no organized effort to penetrate the jungle. Probably there never will be. But without authoritative knowledge the situation will survive as long as the system lasts which enables some of the shrewdest and the worst judges to wrap the sanctities of their office around them and pose before the public in a group picture with judges who are inexpressibly superior to them in character, in mind, in judicial ability and performance. . . .

The problem of the American Bar and the American people in most states is to achieve a system which insures security of tenure to the judges who deserve it, and which assuredly disposes of the judge who cannot be induced to work in harness for the common good.¹⁷

THE ACTIVITY OF THE BAR IN JUDICIAL SELECTION

The modern era of selective bar associations,¹⁸ which dates from the post-Civil War period, has been marked by constantly increasing activity on the part of local associations in behalf of improved judicial selection. In perspective, this activity appears as an antidote for the rapidly developing urban conditions described by Mr. Harley. The largest cities have had the most active associations. All of the cities having a population of 450,000 persons or more, excepting Buffalo and Washington, in 1932 had associations that actively participated in the judicial selective process. Practically all of these cities have an elective Bench.¹⁹

While there are references to Bar activity in behalf of good judicial selection antedating the formation of the modern selective bar associations, the intensive campaigns conducted by the organ-

¹⁷Editorial, *Journal of the American Judicature Society*, XVII, No. 3 (October, 1933), 75-77.

¹⁸The Association of the Bar of New York City was organized in 1870; other bar associations were founded as follows: Cincinnati, 1872; Cleveland, 1873; Chicago and St. Louis, 1874; Memphis and Nashville, 1875; Boston, 1877. State associations organized early were: New Hampshire, 1873; Iowa, 1874; Connecticut, 1875; New York, 1876; Illinois, Maine, Nebraska, 1877; and Wisconsin, 1878. The American Bar Association was formed in 1878. See A. Z. Reed, *Training for the Public Profession of the Law*, p. 206.

¹⁹Twenty-seven of the forty-two United States cities having a population of over 200,000 persons in 1932 had bar associations which reported activity in judicial selection. They were: New York City, Chicago, Philadelphia, Detroit, Los Angeles, Cleveland, St. Louis, Baltimore, Boston, Pittsburgh, San Francisco, Milwaukee, Minneapolis, New Orleans, Cincinnati, Indianapolis, Rochester (N. Y.), Portland (Ore.), Akron, Columbus, Toledo, Denver, Memphis, Birmingham, Omaha, Providence, and Oakland. These twenty-seven cities contained 20 per cent of the nation's population. Plans were reported under consideration in Buffalo, Newark, Louisville, St. Paul, and Dallas. See Luther Ely Smith, "What Aid Can the Bar Render in the Selection of Judges?" *American Bar Association Journal*, XVIII, No. 8 (August, 1932), 505-9.

In 1934 replies to an American Bar Association inquiry reported bar primaries as having been held by the following associations: Cincinnati, Cleveland, Colorado State, Des Moines, Los Angeles, Louisiana State, Milwaukee, Minneapolis, Minnesota 11th Judicial District, Alameda County (Oakland) California, Omaha, Rhode Island, Tulsa, and small associations in California, Indiana, Oregon, Virginia, and West Virginia. See "The Bar's Opinion on Judicial Selection," *American Bar Association Journal*, XX, No. 9 (September, 1934). The list, however, omits Chicago.

ized Bar in metropolitan communities are in most cases of comparatively recent origin. Bar activity in Chicago has been traced as far back as 1870. But, as in other cities, the plan has been systematized, extended, and applied with greater energy during the last quarter-century.

Within the past decade, however, the organized Bar in metropolitan centers has become more aroused than ever before over possible ways and means of effectively applying its efforts in behalf of the selection of well-qualified judges. In 1924 the Conference of Bar Association Delegates of the American Bar Association,²⁰ through its committee on judicial selection, reported upon the work of local bar associations in this matter. Out of eight hundred associations queried, only one hundred replied. Approximately two-thirds of those reporting exerted no influence as such. But practically all of the associations in metropolitan centers reported decided activity. This finding confirms the earlier statement that the problem is peculiarly one of urban areas.

By means of a permanent committee on the subject the Conference of Delegates from year to year has aroused interest in the problem and has urged bar associations to take up judicial selection as a major activity. In 1928, the committee declared:

What is now most needed is a ready response to association recommendations by the electorate, and this is to be got by the adoption of methods which win popular confidence, and by the energetic support of its candidates by the entire bar. . . . A sustained effort directed from the conference through the state and local bar associations . . . will in due course of time serve to stamp the system of judicial selection through the medium of the bar as an accepted institution in our political life—accepted by the people, we mean, with the like force of law itself.²¹

The energetic campaigns conducted by bar associations in Chicago, Cleveland, and Los Angeles; the disclosures of the Seabury investigation relating to the magistrates' courts in New York City; the reports of the National Commission on Law Enforcement dealing with the link between politics and the administration of criminal justice; and the educational prodding of the American Judicature Society—all served to arouse widespread interest in the subject among the legal fraternity. In 1933 the American Bar Association adopted judicial selection as one of four major topics for common study and discussion, to bring about voluntary co-operation

²⁰In 1908 the American Bar Association had adopted the following canon relating to the selection of judges: "It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench; and it should strive to have elevated thereto only those willing to forego other employment . . ." (*American Bar Association Journal*, XI, No. 11 [November, 1925], 750).

²¹*Ibid.*, XIV (November, 1928), 617.

between the national, state, and local associations.²² The fact that judicial selection was chosen against six competitors indicated, in the words of a commentator, "the swiftly growing interest in this subject."

What effect is this "swiftly growing interest" on the part of the Bar in the mode of selecting the Bench likely to have on the practices now in force? Will the activity of the Bar, as the committee hoped in 1928, "in due course of time serve to stamp the system of judicial selection through the medium of the Bar as an accepted institution in our political life"? Furthermore, what are the implications of a movement of this character? At a time when blocs, minorities, and "pressure groups" are viewed with alarm, should the efforts of selective bar associations²³ to influence the election of judges be regarded as in the public interest? Or should it be viewed as a specific corrective that the body politic, like its corporeal counterpart, has developed to counterbalance too much democracy in judicial selection?

THE PURPOSE OF THIS INQUIRY

This inquiry is an attempt to shed some light on questions such as these by analyzing the experience of a metropolitan community in which the Bar has participated directly in the process of judicial selection for more than half a century.

In the chapters that follow, the conditions of judicial selection that resulted from Chicago's phenomenal growth and against which the Bar's activities have been carried on, are presented; the rôle of the Bar is sketched and the intrinsic merit of its recommendations is appraised; the influence of the Bar in various situations is evaluated; and several major factors affecting the influence of the Bar are analyzed.

Finally, the experience of other communities, both as to the rôle of their local bar associations in judicial selection and as to their provisions for the selection, tenure, and removal of judges, is summarized as a basis for suggesting improved methods of judicial selection for Chicago.

²²The topics selected were: (1) criminal law and its enforcement; (2) legal education and admission to the Bar; (3) unauthorized practice of the law; (4) selection of judges. See the *Journal of the American Judicature Society*, XVII, No. 3 (October, 1933), 85.

²³The membership of the Chicago Bar Association, for example, comprises less than one-half of 1 per cent of the total Chicago electorate.

CHAPTER II

THE BACKGROUND OF JUDICIAL SELECTION IN CHICAGO

In addition to the problem inherent in the choice of a good judge, the selective process in Chicago encounters the complexities arising from the large number of judicial offices to be filled and the voter's cumulative burden which grows out of the democratic doctrine of popular elections as applied to a metropolitan constituency. Without taking these circumstances into account, it would be impossible to indicate clearly the difficulties which have confronted the organized Bar of Chicago, and the methods which it has employed to influence the process of judicial selection.

THE NUMBER OF JUDGES TO BE CHOSEN

A total of eighty-eight judges¹ is elected to sit on the nine separate tribunals of city- or county-wide jurisdiction, which serve a population of nearly four million persons. These judges are chosen by an electorate of more than one and one-half million voters, approximately 85 per cent of whom reside within the City of Chicago. While the mere number of offices to be filled and the vast extent of the electorate eloquently emphasize the task of selection, the problem is seen in its true perspective only when the historical development of the judicial mechanism is traced.

The outlines of the present court organization were established by the adoption of the present Illinois Constitution in 1870. Induced undoubtedly by the tenfold increase in Chicago's population in the two decades preceding,² the constitutional convention provided a special court system for Chicago and Cook County. Cook County was constituted a single judicial circuit. In addition to the Circuit and County courts, which were standard for all counties, Cook County retained two existing courts under new titles. The former County Court of Common Pleas, which subsequently was retitled the Superior Court of Chicago, was continued as the Superior Court of Cook County, with jurisdiction concurrent to that of the Circuit Court; and the old Recorder's Court of the City of Chicago became the Criminal Court of Cook County, with the criminal jurisdiction of a circuit court. A permissive provision authorized the creation of probate courts in counties having a population of over fifty thousand—which was done in Cook County in 1877.³

¹One judge holds office for nine years; two serve for four years; and the remaining eighty-five have six-year terms.

²In 1850 the United States Census credited Chicago with 29,963 persons, and in 1870, with 298,977.

³*Constitutional Convention Bulletin* (1919), No. 10, p. 737.

Thus in 1870, amid a population of less than 300,000 persons, the voters residing in Chicago elected ten judges—the Supreme Court member for the Seventh District, of which Chicago still forms a part; five judges of the Circuit Court; three judges of the Superior Court and the judge of the County Court. The term of the Supreme Court judge was nine years, of the County judge four years, and of the other judges six years. A system of justices-of-the-peace was provided for the City of Chicago. These justices were to be appointed for four-year terms by the governor with the consent of the senate, but only upon the recommendation of a majority of the judges of the Circuit, Superior, and County courts.⁴

Since 1870 metropolitan Chicago has continued its phenomenal growth. The City of Chicago has expanded eleven fold; Illinois as a whole has barely trebled. The proportion of the state's inhabitants residing in Chicago increased from 11.8 per cent in 1870 to 44.3 per cent in 1930. During the same period Cook County advanced from 13.8 to 52.2 per cent.

This growth in population has been accompanied by increases in the personnel of existing courts and by the addition of new tribunals. The creation of the Probate Court of Cook County in 1877 has already been mentioned. In 1897 three appellate courts were created for Cook County, and it was provided that the three members of each Bench were to be assigned from among the judges of the Circuit and Superior courts of Cook County. In 1899, the Juvenile Court of Cook County⁵ was established as a branch of the Circuit Court. The judge of this court also was to be drawn from the Circuit Bench. Furthermore, under the Constitution, the judges of the Criminal Court of Cook County are drawn from the Cook County Circuit and Superior Court rosters.

The Constitution provided that the General Assembly might "increase the number of judges by adding one to either of the courts for every additional fifty thousand inhabitants in said county over and above a population of four hundred thousand."⁶ This provision proved to be more than generous, for at no time has the number of Circuit and Superior judges even approximated the quota. The maximum number is now forty-eight, whereas the constitutional quota is eighty. The various increases that have been authorized in the two tribunals are enumerated in Table I. It will be noticed that the largest single increase occurred when the elective Municipal Court of Chicago in 1905 replaced fifty-two

⁴*Constitution of 1870*, Art. VI, sec. 28.

⁵*Laws of 1899*, p. 879. Act approved April 21, 1899. The new court was given jurisdiction of cases of dependent, neglected, and delinquent children under eighteen years of age.

⁶Art. VI, sec. 23.

TABLE I
INCREASES IN THE JUDICIARY ELECTED WHOLLY OR PARTLY BY
VOTERS RESIDING IN CHICAGO

	COURTS						
	Supreme	County	Probate	Circuit	Superior	Municipal	Cumulative Total
Established in.....	1818	1819	1877	1819	1845	1905	.....
Term in years.....	9	4	4	6	6	6	.....
Personnel in 1870.....	1	1	.....	5	3	.....	10
Subsequent additions:							
1875.....					4		14
1877.....			1				15
1887.....				6			21
1892.....					2		23
1893.....				3	3		29
1905.....						28	57
1911.....					6		63
1914.....						3	66
1915.....				6			72
1917.....					2		74
1923.....					8		82
1924.....						6	88
Total personnel in 1936.....	1	1	1	20	28	37	88

appointive justices of the peace.⁷ Thus at a single stroke the number of elective judges was increased from twenty-nine to fifty-seven. Subsequent increases in this and other tribunals have raised the number of judges in the county to eighty-eight.⁸

THE VOTER'S BURDEN

The democratic doctrine of popular elections, which, as we have seen, began to take root early in Illinois history, has flourished like the green bay tree. The successive state constitutions increased the list of elective state and county officers. The list has been lengthened by legislative action also. The result is a bewildering array of offices to be filled and a succession of elections which probably has few equals anywhere. The creation of special units with elective trustees has tended to accentuate the situation in the state's

⁷*Constitution of 1870*, Art. IV, sec. 34, as amended in 1904; the Municipal Court Act was adopted in 1905. The appointive method of selecting the justices had been originally hailed "as the commencement of a great reform, looked forward to by the people and especially the bar" (*Chicago Legal News*, III [April 15, 1871], 228). However, in spite of the elaborate precautions, unscrupulous persons had sometimes succeeded in being appointed justices, and had taken advantage of the total lack of supervision to make the "justice shops" an agency of extortion and political corruption. (See *Annual Report, Civic Federation of Chicago*, 1902, p. 7.)

⁸Statutory authorization exists for adding nine judges to the Municipal

urban centers. Consequently, the typical Chicago voter has been confronted with a ballot that is not only long, but also wide and frequent.⁹ When we add to the aggregate number of offices to be filled those for which candidates are nominated in direct primaries, the hosts of candidates to be studied, and the many bond issues and questions of public policy to be voted upon, not to mention the physical necessity of going to the polling place for the periodic registrations and for balloting, we begin to realize the burden which is imposed upon Chicago voters.¹⁰

What this array of electoral duties requires in terms of actual performance and its relation to the elective, fixed-term system of judicial selection is shown in the accompanying tables. Table II lists the total number of offices, judicial and otherwise, for which a typical elector in Chicago votes. Table III lists the judicial elections showing the number of times the elector was expected to go to the polls during a specimen six-year cycle. It also summarizes the voter's burden during the same six-year cycle in terms of the number of offices to be filled, the number of candidates that sought office, and the many other matters the Chicago electors were called upon to decide. In each table the matters relating to the election of the judiciary are separately listed, in order to show the extent to which this system of selection complicates the total task of the voter.

From Table II it will be seen that of the 165 elective officers, 88 or more than half, are members of the judiciary.

From Table IV it is manifest that to nominate and elect a single set of these 88 judges, a voter is expected to go to the polls eight different times; moreover, he must make an additional trip for the quadrennial registration. Table IV also discloses that, omitting the judge of the Supreme Court, the judges of the six local court systems are elected in nine different groups and in six independent cycles. In four of the groups, however, the judicial election is held simultaneously with contests for other offices. Special judicial elections to fill vacancies in the various courts may be called concurrently with any judicial or general elections.

It will be noticed in Table IV that three cycles (II, III, IV) are devoted solely to the election of judges of the Circuit and Superior courts. Nominations for these positions are made by the conven-

Court. This increase is subject to approval by referendum, however, and in 1929 was defeated by the narrow margin of 103,188 votes for, and 124,928 votes against. The total vote on the proposition represented 54.4 per cent of those who went to the polls and only 17.0 per cent of the eligible electorate (*Chicago Daily News Almanac*, 1930, p. 740).

⁹See *The Short Ballot in Illinois* (report to the City Club of Chicago; University of Chicago Press, 1912), and *Ballot Changes for Illinois* (Chicago: Illinois League of Women Voters, 1921).

¹⁰See chap. xx for effect of the "long" ballot on popular participation in judicial elections.

TABLE II
PUBLIC OFFICERS VOTED FOR BY A TYPICAL ELECTOR
RESIDING IN CHICAGO

Government	Term in Years	Office	Number
Federal	4	President	2
		Vice-president	
	6	Senator	2
	2	Representatives at large	2
	2	Representative (district)	1
			7
State	4	Governor	1
	4	Lieutenant-Governor	1
	4	Secretary of State	1
	4	Auditor of Public Accounts	1
	4	Treasurer	1
	4	Attorney-General	1
	6	Trustees, University of Illinois	9
	4	Superintendent of Public Instruction	1
	4	State Senator (district)	1
	2	State Representatives (district)	3
	6	Clerk, Supreme Court	1
	6	Clerk, Appellate Court (district)	1
	9	Justice, Supreme Court (district)	1
			23
County	4	President, Board of County Commissioners	1
	4	County Commissioners (from Chicago)	10
	4	State's Attorney	1
	4	County Sheriff	1
	4	County Treasurer	1
	4	County Surveyor	1
	4	Recorder of Deeds	1
	4	Coroner	1
	4	County Superintendent of Schools	1
	6	Sanitary District Trustees	9
	4	Assessor	1
	4	Board of Assessment Appeals	2
	4	County Clerk and Clerk of County Court	1
	4	Clerks of Probate, Circuit, Superior and Criminal Courts	4
	4	Judges of the County and Probate Courts	2
	6	Judges of the Circuit and Superior Courts	48
			85
Municipal . . .	4	Mayor	1
	4	City Clerk	1
	4	City Treasurer	1
	4	Alderman (ward)	1
	6	Municipal Court, Clerk and Bailiff	2
	6	Municipal Court, Judges	37
			43
Political Party	2	State Central Committeeman (district)	1
	2	Senatorial Committeemen (district)	3
	2	Ward Committeeman	1
		Delegate and alternate, National Convention (district)	2
			7
Total			165

TABLE III
SUMMARY OF THE TYPICAL CHICAGO VOTER'S ELECTORAL
RESPONSIBILITIES DURING THE SIX-YEAR PERIOD 1925-30, INCLUSIVE*

A. Candidates in Nominating Primaries and Final Elections

Branch of Government	Primary Elections					General Elections		
	No. of Elections	No. of Nominations	Republican	Democrat	Total	No. of Elections	No. of Offices Filled	No. of Candidates
Executive and Legislative:								
Federal.....	3	8	44	17	61	3	10	57
State.....	3	11	31	16	47	3	20	98
County.....	3	58	220	126	346	3	58	154
Municipal.....	2	5	17	8	25	2	5	14
Total.....	3	82	312	167	479	6	93	323
Judicial (Regular):								
Supreme Court.....						1	20	31
Circuit Court.....						4	28	52
Superior Court.....								
County Court.....	2	2	5	3	8	2	2	5
Probate Court.....	2	2	5	2	7	2	2	5
Municipal Court.....	3	37	104	51	155	3	37	113
Total.....	3	41	114	56	170	7	89	206
Judicial Vacancies:								
Circuit Court.....						1	2	5
Superior Court.....						2	7	18
Municipal Court.....	2	3	12	5	17	3	4	7
Total.....	2	3	12	5	17	6	13	30
Total, Judicial.....		44	126	61	187		102	236
Grand Total.....	4†	126	438	228	666	7†	192	559

B. Propositions Involving Bond Issues‡

	Voted upon in Primary Elections		Voted upon in Final Elections	
	Number	Aggregate Amount	Number	Aggregate Amount
Improvement bonds:				
State of Illinois.....			2	\$34,000,000
County of Cook.....			10	53,495,500
City of Chicago.....	52	\$121,849,000	41	93,927,000
Park systems:				
South Parks.....			8	27,500,000
Lincoln Park.....	2	4,000,000	7	16,000,000
West Parks.....			2	30,000,000
Total.....	54	125,849,000	70	254,922,500

*Contests for subordinate districts, including aldermanic office, omitted.

†Total number of separate elections held was fifteen, four of which were aldermanic contests.

‡In addition, there were five "public policy" questions voted upon at primary elections and twenty-nine such referenda in the final elections during this period.

TABLE IV
CYCLES OF JUDICIAL ELECTIONS IN CHICAGO

Group	Court	Nominated by	Number of Judges	Term of Office in Years	Election Held in	Current Election Cycles	Joint or Separate Judicial Election
1.....	Supreme	Convention	1	9	June	I†1924, 1933, 1942	Simultaneous with group 2 or separate
2.....	Circuit Superior	Convention	20	6	June	II 1927, 1933, 1939	
3.....	Group A	Convention	1	6	June	II 1927, 1933, 1939	Simultaneous with group 2
4.....	Group B	Convention	6	6	June	III 1928, 1934, 1940	Separate
	Group C	Convention	21	6	June	IV*1929, 1935, 1941	Separate
	County	Primary	1	4	Apr. and Nov.	V†1926, 1930, 1934	These elections are held simultaneously with the general county primary and election.
5.....	Probate	Primary	1	4	Apr. and Nov.	V†1926, 1930, 1934	
6.....	Municipal Group A	Primary	13	6	Apr. and Nov.	VI 1930, 1936, 1942	These elections are held simultaneously with the respective general county or general presidential primary and election with which they concur.
	Group B	Primary	12	6	Apr. and Nov.	VII 1926, 1932, 1938	
	Group C	Primary	12	6	Apr. and Nov.	VIII 1928, 1934, 1940	

*In 1935 two cycles—the November 1929, 1935, 1941 and February 1925, 1931, 1937 sequences of the Superior Court elections—were consolidated into the June 1929, 1935, 1941 sequence. Thus was eliminated one cycle of judicial elections in which a single judge had been elected simultaneously with aldermen. The extension of the councilmanic term from two to four years occasioned the shift.

†The Supreme Court Cycle I concurs with Cycle II on every third Circuit Court election.

‡Cycle V (County and Probate Court elections) concurs alternately with Cycles VI, VII and VIII.

tions of the political parties. Were it necessary to make these nominations in public primaries, at least two additional cycles would be required.¹¹

Under the present schedule we see that judicial elections are a factor in practically all of the elections held in Chicago, and that in three cases they are the principal issues at stake. Furthermore, that the average incidence of elections is once every five months. This frequency of occurrence increases the burden of the individual voter and multiplies the task of the organized Bar.

Table III indicates that during the particular six-year cycle cited, 126 nominations were made by direct primary in each party, and of this number 44, or 35 per cent, were for judicial offices. For these offices there were 438 Republican and 228 Democratic candidates, of which 126 Republicans, or 29 per cent, and 61 Democrats, or 27 per cent, were for judicial offices. In the elections 192 offices were filled, of which 102 or 53 per cent were judicial; and there were 559 candidates, of which 236, or 42 per cent, were judicial.

The typical voter, however, probably does not make a distinction between candidates for judicial office and those for executive and legislative duties. (We suspect that he places greater emphasis on the two latter.) Far more important to him than the percentages just mentioned, is the fact that within this six-year period (although he probably did not take time to count them) he was expected to express an intelligent opinion on the merits of 997 candidates, if he happened to be a Republican, or 787, if lucky enough to be a Democrat. The independent voter thus had to choose between 1,784 candidates. This was an average of from 70 to 90 candidates per election—not to mention the 154 bond issues and the 34 questions of public policy on which he was also supposed to exercise his sovereign authority.

Or, with 423 candidates for 146 judicial offices in 18 different elections to be considered by each voter within this period—an average of nearly thirty per election—is it any wonder that from time to time some of the voters have urged the organized Bar to guide them out of the electoral maze, and that the Chicago Bar Association for several decades has responded, thus seeking to influence the process of judicial selection in Chicago?

¹¹This would be true in the case of the Circuit Court elections in the June, 1927-33-39, series and also for the Superior Court contests in the series 1929-35-41, since no prior election date falls conveniently near; in the case of the Superior Court contests in June of the 1922-28-34 series, the nominations could be made in the preceding general April primary.

PART II
THE RÔLE OF THE BAR

CHAPTER III

BAR PARTICIPATION IN JUDICIAL SELECTION

For practical purposes, Chicago's current régime of judicial selection dates from 1870, when the present Illinois Constitution was adopted. We have seen that the judicial article of the Constitution contained a compromise by which several separate tribunals then in existence were continued as independent units of the special court system for Chicago and Cook County. Chicago's tangle of judicial elections is one result of that compromise. For, at the very start, an elective judiciary of only ten men sat in four separate tribunals, and were chosen on five different dates. Since then, four more cycles of judicial elections have been added, resulting in the nine separate elections necessary for choosing the eighty-eight-man Bench of today.

Accepting 1870 as a convenient starting-point, we find from Tables V and VI that during a sixty-four-year period Chicago has had an aggregate of 78 separate judicial primaries and elections. Either the entire Chicago Bar or the Chicago Bar Association has participated in 45, or 58 per cent of these contests. Moreover, many of those in which there was no apparent participation occurred in the early part of the era and involved only single offices. It is noteworthy that the earliest efforts in this direction were undertaken by the members of the profession as individual citizens only, and even prior to the existence of the formal bonds within the profession that were to be supplied later by the formation of the Chicago Bar Association in 1874.

For reasons that will be listed later, the early years were marked by spasmodic efforts. Beginning in 1885, however, and with only a few lapses, the Bar has established a remarkable record of participation in judicial selection. This record is noteworthy not only for its comparative continuity and persistence, but also because, without formal legal sanction, it is an activity of a private professional agency which seeks to exert an influence upon a wholly public process.

To students of government and politics, this record, and similar records in other communities, raise many questions of widespread civic interest, such as the following:

Why should a specialized professional group, composing a numerically inconsequential element of the electorate, seek to influence the selection of public officers, who, both law and custom in thirty-seven states have decreed, shall be chosen by all the voters?

TABLE V
GENERAL RECORD OF ACTIVITY BY THE CHICAGO BAR IN CONNECTION
WITH JUDICIAL ELECTIONS*

Date		Court					Character of Bar Activity, Where Known
Year	Month	Supreme	County and Probate	Circuit	Superior	Municipal	
1870	May	1	1	3			Nominating Primary
1871	Oct.			1V	1B		?
1873	May			5	1A		Meeting to indorse incumbents
1874	Nov.		1		1D		?
1875	June	1V					?
1877	Nov.				1B		?
1878	Nov.		2				?
1879	June	1		5	1A		?
1880	Nov.				4C		?
1881	Nov.				1D		?
1882	Nov.		2				?
1883	Nov.				1B		?
1885	April			5			Petition
1885	Nov.	1V			1A		?
1886	Nov.		2		4C		?
1887	May			6S			Nominating Primary
1887	Oct.				1D		Nominating Primary
					State's Att'y.		
1888	Nov.	1					?
1889	Oct.			1V	1B		Nominating Primary
1890	Nov.		2		1V		?
1891	May			11			Nominating Primary (Code of 1891)
1891	Sept.				1V		Nominating Primary (Code of 1891)
					1A		?
1892	Nov.			2V	6C		?
1893	July			3S	1D		Nominating Primary (Code of 1891)
				1V	2V		
					3DS		
1894	Nov.		2				?
1895	Nov.				1B		?
1897	April	1		14	1A		Petition
1898	Oct.		2		6C		Preferential Primary
					1V		
1900	Oct.		1VP		4D		Preferential Primary
1902	May		2	3S	1B		Special Nominating Primary (for an election held unconstitutional)
					3S		
1903	May			14	1A		Preferential Primary
1904	Oct.				6C		Preferential Primary
1905	Oct.			1V	1V		Preferential Primary
					4D		Preferential Primary
1906	May	1					
	Oct.		2	1V		28	Preferential Primary
1907	Oct.				1V		Preferential Primary
					1B		
1908	Oct.					9	Preferential Primary
1909	May			14	1A		Preferential Primary
1910	Sept.		2	1V	1V	9	Preferential Primary
	Oct.				6C		
1911	Oct.			1V	10D		Preferential Primary
1912	Mar.					10	Preferential Primary
	Oct.						
1913					1B		?

TABLE V—Continued

GENERAL RECORD OF ACTIVITY BY THE CHICAGO BAR IN CONNECTION WITH JUDICIAL ELECTIONS*

Date		Court					Character of Bar Activity, Where Known
Year	Month	Supreme	County and Probate	Circuit	Superior	Municipal	
1914	Mar.		2		1V		Preferential Primary
	Oct.				10		
1915	May	1		20	1V		Preferential Primary
					1A		
1916	May			1V	1V	2V	Preferential Primary
	Oct.				6C	10	
					1V		
1917				2V	12D		No Bar vote
1918	Mar.		2			1V	Preferential Primary
	Oct.					11	
1919	Oct.			1V	2V	1V	Preferential Primary
					1B		
1920	Mar.			2V		1V	Preferential Primary
	Oct.					10	
1921	May			20	1A		Indorsement of "Democratic Slate"; No Primary
1922	Mar.		2		6C	1V	Preferential Primary
	Oct.					10	No Superior Court Primary in 1922, however
1923	Oct.			2V	1V		Preferential Primary
					20D		
1924	Mar.	1		1V	2V	2V	Preferential Primary
	Oct.					13	
					1B		
1925	Mar.		2			12	Preferential Primary
1926	Oct.						
1927	May			20	1V		Preferential Primary
					1A		
1928	Mar.				6C	12	Preferential Primary
	Oct.				State's Att'y.		
					20D		
1929	Oct.						Preferential Primary
1930	Mar.		2			13	Preferential Primary
	Oct.						
1931	Mar.				1B	1V	Preferential Primary
1932	Mar.				State's Att'y.	12	Preferential Primary
	Aug.						
	Oct.						
1933	May	1	1VP	20	1A		Preferential Primary
					2V		
1934	Mar.		2			12	Preferential Primary
	April				6C		Preferential Primary
	July					12	Preferential Primary
1935	May	1V			21D		Preferential Primary
1936	Mar.					13	Preferential Primary

*This table represents the result of a careful search of contemporary newspapers, journals, books, etc., as well as Association records; and while probably incomplete, it forms as accurate a statement as historical research has been able to produce.

Key to symbols:

Numerals—number of judges chosen in specified election.

V—Election to fill vacancy.

P—Probate.

S—Special election to add new positions to court.

A
B
C
D

—Respective Superior Court election series.

TABLE VI
OCCURRENCE OF JUDICIAL ELECTIONS IN CHICAGO, 1870-1936

Court	Elections		Special	Bar Activity
	Primary	Regular		
Supreme.....		8	3	1*
County.....	7	17		10
Probate.....	7	15	2	11
Circuit.....		13	17	25
Superior:				
Series A.....		10	1	8
Series B.....		11	1	9
Series C.....		11	6	13
Series D.....		11	6	14
Municipal:				
Series A (2).....	4	6	14	all
Series B (4).....	5	6		all
Series C (6).....	5	6		all

*In the majority of Supreme Court elections the leading parties have united in nominating a single candidate in each situation, thus eliminating the occasion for a preferential Bar primary.

What methods has the Bar used to influence the process of popular selection?

What have been the conditions under which its efforts have been exerted?

What factors have aided or hindered its activity?

What degrees of success have its efforts attained?

What are the implications of this activity for the future? Will it, if sufficiently prolonged, achieve the status of custom possessing the force of law, and perhaps become a part of the specialized machinery of selecting these public officers?

The information with which to answer these questions is contained in the records of the many election situations in which the efforts of the Bar have been exerted. Each election, in turn, is a composite of many factors, each of which must be carefully appraised before a satisfactory conclusion can be reached. Such elements as the solidarity of the ranks of the legal profession; the exact nature of the Bar's efforts to influence the selective process; the character and popularity of the candidates; the current alignment of the political parties; and the immediate political issues in each situation at the moment must be studied, and their relation to the result of the contest must be analyzed. To make a systematic canvass of each factor for every election would be tedious and yet not necessarily conclusive. The plan has been adopted,

therefore, of selecting for study a number of election situations which typify the different forms of activity engaged in by the Bar of Chicago, and which reflect the tremendous changes that have occurred during the period under observation.

Before these different types of situations are taken up, however, a brief discussion will be given of the organization of the Chicago Bar Association and of its early history, in relation to the local Bar's efforts in behalf of judicial selection.

Beginning with the contest of July 2, 1870, seven election situations have been studied which illustrate the different ways in which the Bar of Chicago and the Chicago Bar Association have sought to participate in judicial selection. The development of the Bar primary is then traced as the most characteristic feature of the Chicago Bar Association's plan of participation.

CHAPTER IV

THE ORGANIZATION OF THE CHICAGO BAR ASSOCIATION

Prior to 1874, when the present Chicago Bar Association was organized, the Bar of Chicago consisted of a few hundred attorneys and had few unifying agencies within the ranks of the profession. Several lawyers had formed a social club in 1869 with James L. High as president.¹ The Chicago Law Institute had been in existence since 1857, but its principal object was to conduct a co-operative law library. While entirely unofficial in character, the columns of the *Chicago Legal News*, which Myra Bradwell had founded in 1869, served as a weekly forum for matters affecting the local Bar. This publication frequently urged the lawyers to organize themselves in order the better to promote the welfare of the profession.²

The Great Fire of '71 probably delayed any development in Chicago of the national movement, which began in 1870, to organize "selective" bar associations. As pointed out earlier, the Chicago Bar Association, founded May 22, 1874, was the fifth organization of eight groups in different cities to take form during that decade.

The motive behind these new organizations represented a reaction to the widespread corruption in national, state, and local politics that followed the Civil War. Chicago had had no scandals comparable to the record of Tweed in New York City. There was in Chicago, however, a group of attorneys who practiced without the legal formality of admission to the Bar. Their activities aroused their more ethically minded brothers to the need of some organized means of purging the local Bar and of upholding its honor and dignity.

The first action to form an association was taken in November, 1873, when a declaration of purpose was issued. Further action was delayed, however, for several months. Meanwhile, the declaration of the previous November had been signed by forty-two attorneys, who expressed their intentions as follows:

The undersigned members of the Bar of the City of Chicago, believing that

¹*Chicago Legal News*, XXV (December 3, 1892), 123.

²For example, in its issue of October 30, 1869, the *Legal News* said: "We suggest that it would be for the interest of the members of the Chicago Bar to hold monthly or quarterly meetings, for the discussion of questions affecting the profession. Would not an annual dinner, attended by the members of the Bar, and their wives, do much toward promoting a spirit of harmony and good feeling between the members of the legal fraternity?"

the organized action and influence of the legal profession, properly exerted, would lead to the creation of more intimate relations between its members than now exist, and would, at the same time, sustain the profession in its proper position in the community, and thereby enable it in many ways to promote its own interests, and the welfare of the public, do hereby mutually agree to unite in forming an Association for such purposes.³

On March 7, 1874, "a few gentlemen of the Chicago Bar" convened at the rooms of the Chicago Law College. Several speakers at this meeting declared that such an organization was needed by the Bar of Chicago

for its own protection, for the elevation of the character of the profession, both as to its learning and morals, to secure the proper discipline of unworthy members of the Bar, and to exercise the influence that by right belongs to the profession in matters of legislation and the administration of justice . . . also, a better social life between the different members of the profession and an establishment of an *esprit de corps*, which, at present, seems to have no existence.

An association of the type proposed, the speakers further noted, to a certain extent, must be exclusive, or the objects to be attained would be defeated at the very outset, and that in assuming to act, those present did not pretend that they were more worthy members of the profession than many others who would undoubtedly unite with them in carrying forward this undertaking . . . making it an association of honorable gentlemen of the legal profession, having the best interests of the profession at heart.⁴

This meeting appointed a committee⁵ to draft a constitution and by-laws. It then adjourned until March 14, 1874.

At the next meeting an executive committee⁶ was appointed to complete the details of organization (incorporation papers were issued May 27, 1874) and to arouse interest among the profession in the new enterprise. In a statement "To the Profession" this committee set forth the fact that while

the legal profession in the City of Chicago number over six hundred, up to the present time it has been without unity of action and its influence has been nothing in the community except as its individual members exercised the same for good or for evil.⁷

³The signers of the proposal were: John N. Jewett, E. B. McCagg, F. H. Kales, Leonard Swett, B. F. Ayer, M. W. Fuller, C. B. Lawrence, George L. Paddock, George O. Ide, M. F. Tuley, Wirt Dexter, George Chandler, George W. Smith, Grant Goodrich, S. A. Goodwin, E. C. Larned, Charles Hitchcock, S. Corning Judd, A. McCoy, Elliott Anthony, T. A. Moran, W. H. Barnum, Charles T. Adams, A. M. Pence, James H. Roberts, William H. King, W. P. Black, J. A. Sleeper, Ira Scott, Henry G. Miller, Thomas Dent, Sidney Smith, O. H. Horton, Farlin Q. Ball, C. M. Hardy, Norman Williams, D. J. Schuyler, S. B. Gookins, Kirk Hawes, J. R. Doolittle, Van H. Higgins, and J. E. Smith.

⁴Statements contained in pamphlet entitled *Constitution and By-Laws of the Chicago Bar Association*, 1874, pp. 7-9.

⁵Those appointed as the drafting committee were: William C. Goudy, Lyman Trumbull, Thomas Hoyne, Robert Hervey, Edwin C. Larned, William H. Barnum, Charles M. Hardy, and A. M. Pence.

⁶The personnel of this committee was: Wirt Dexter, Edwin C. Larned, S. A. Goodwin, Ezra B. McCagg, Murray F. Tuley, William P. Black, Charles M. Hardy, William H. Barnum, Ira Scott.

⁷*Op. cit.*, p. 2.

The corporate objects of the new Association were stated in its constitution to be:

to establish and maintain the honor and dignity of the profession of the law, to cultivate social intercourse among its members and to increase its usefulness in promoting the due administration of justice.⁸

The by-laws provided for a judiciary committee

who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending, from time to time, to the Association, such action as they may deem expedient.

With these exceptions, however, no mention or reference, even indirect, was made to the subject of judicial selection. No mention of it was made, likewise, in the executive committee's address to the profession.⁹ The sole reference to the judiciary in that statement was the mention of an opportunity that the profession then had to observe the work of the courts for the purpose of discovering any defects or omissions in the new revision of the Illinois statutes which had recently been completed.

It is perhaps not surprising that no reference was made to the methods of selecting judges and the responsibility of the Bar therefor. The popular election of judges appears to have been giving satisfactory results. Less than a year before, the entire Circuit Bench of Cook County had been re-elected without a partisan contest or political maneuvering. Another explanation of the seeming lack of organized interest in the subject is the fact that such interest appears to have been expressed through the activities of individual attorneys, instead of as a concerted effort through the new Association. This continued to be the case for more than a decade, when the Association itself took up the problem of judicial selection.

The first and chief concern of the new Association was to purge the profession of unworthy practitioners. In fact this disciplinary function has always been regarded as the Association's principal purpose. The original prospectus said:

The Association intends to discipline its own members, when necessary, and to prosecute all parties guilty of misconduct before the Supreme Court, and have them disbarred. . . . There is no one, whose duty it has heretofore been, to prosecute such offenders, and no individual felt himself strong enough, out of simple duty to the profession, to undertake such a task. With an organized Association behind the [grievance] committee, whose collective duty it is to take charge of such matters, it will be easy to rid the profession of such characters.¹⁰

In view of the rôle of leadership in judicial selection which the Association later assumed, brief mention should be made of the difficulties which confronted the new organization in its early years.

⁸Art. II, *Constitution and By-Laws of 1874*, p. 17.

⁹For episodes in the early history of the Association see articles by George W. Gale in the *Chicago Bar Record*, XVI (1935), p. 119; XVII, pp. 97 and 139.

¹⁰*Op. cit.*, p. 5.

The task of merely maintaining the organization in the formative period was evidently so great as to absorb most of its energies.

During its first year, relates a recent account of the early days,¹¹ 202 members paid the original \$25.00 initiation fee. Two hundred other attorneys had "subscribed the constitution" in token of their joining the Association. The initiation fee was later reduced to \$15.00. In 1876 an annual assessment, in lieu of dues, was placed at \$10.00, and then in 1883 was reduced to \$2.00. The minutes of a meeting held January 12, 1878, refer to a "large falling off" as to both members and finances. It was noted, also, that "the names of many of the most learned and shining members of the Bar were not on the rolls. It would be folly to say that the remainder who were members comprised the cream of the Bar."

In 1877-79 the Association became involved in the Congressional investigation of charges against Judge Henry W. Blodgett of the United States District Court in Chicago. Three members of the Association, two of whom (one of these was also the Association's secretary) were members of its "committee of inquiry" appointed in 1877 to investigate "any improper conduct . . . tending to obstruct the administration of justice," filed charges¹² at Washington as the basis of an impeachment against Judge Blodgett. While the complainants did not represent the Association, their official connection with it, the gravity of their allegations, and Judge Blodgett's prominence, split the membership into groups and nearly disrupted the organization.

For a number of years following the Blodgett case, barring annual dinners, the Association's affairs stagnated and interest in it ebbed low. From a membership of some 400, who "subscribed the constitution," in 1874, for example, the membership appears to have dwindled to 209 in 1879. Also, in 1886, a committee appointed "to enlarge the membership," succeeded from February to Decem-

¹¹Russell Whitman, "The Chicago Bar Association, a Sketch of Its History," in *American Blue Book* (Illinois attorneys, 1927), p. 13.

¹²The charges against Judge Blodgett were that he was guilty of gross favoritism toward his friends and severe judicial pressure against his enemies; that he allowed ex parte statements to be made to him out of court; that his rulings favored railway corporations; that his manner of conducting court obstructed justice; and that he was guilty of corruption. For the detailed charges see *Chicago Legal News*, XI (January 11, 1879), 135-36. Also, *House Report No. 142* and *House Miscellaneous Document No. 22*, Forty-fifth Congress, Third Session. The resolution calling for an investigation had been introduced into the House of Representatives by Carter H. Harrison, Sr. The complainants were John S. Cooper, John J. Knickerbocker, and Henry I. Sheldon. After conducting hearings in Chicago, a Congressional committee recommended that the charges be dropped, but censured the judge. His friends, however, greeted the action with great jubilation and staged a procession in his honor. See *Chicago Legal News*, March 8, 1879.

Charles H. Dennis, in his estimable *Victor Lawson* (University of Chicago Press, 1935), p. 45, infers that the proceedings against Judge Blodgett were "incited and promoted" by the late Melville E. Stone, then managing editor of the *Chicago Daily News*.

ber in securing the names of only twenty-three applicants."¹³ While operating under these difficulties, the Association was obviously not in a position to act aggressively in the matter of judicial selection. These circumstances, in addition to other conditions to be touched upon later, may explain why the Association's leaders avoided conflict and were satisfied to have individual attorneys assume the leadership in specific election situations.

THE EARLY INACTIVITY OF THE BAR

With the exception of the Circuit Court election of 1873, the Bar appears to have taken no part in judicial campaigns from 1870 until the Circuit Court election of 1885.¹⁴ During this fifteen-year period nine judicial elections occurred. All but two of them, however, involved only single judgeships. In several of these individual contests the incumbents had bipartisan support and were re-elected without serious competition. Similar situations, in fact, have occurred frequently throughout the entire period under consideration. When an incumbent or nominee has had qualifications that the Bar regarded as satisfactory and has had no serious opposition, the Bar appears to have considered independent action superfluous.

More difficult to explain, however, is the Bar's failure to take a hand in the Circuit Court contest of 1879 and in the Superior Court elections of 1880, 1886, and 1892. A search of the newspapers of these periods has disclosed no reference to any Bar efforts. In each of these contests the major parties nominated full tickets and partisan spirit ran high. The Superior Court contests occurred at the same time as general elections, and the judicial candidacies appear to have been overshadowed by the contests for other offices.

Thus it appears that when partisan spirit was strong, and so long as the character of the candidates was generally satisfactory, the Association avoided any effort to stem such a tide. Discussing the eight candidates for the four Superior Court positions in the 1880 election, for example, General Israel N. Stiles, who was then president of the Association, in a preelection address at Hershey Hall said: "The entire list of eight men . . . are men that, so far as their personal honor and integrity are concerned, are without fear and without reproach."¹⁵

¹³Whitman, *op. cit.*

¹⁴At a dinner held December 3, 1892, opening new headquarters, James L. High reviewed the work of the Association during its eighteen years of existence. Among the constructive measures adopted as a result of its activity, he cited the Appellate Court Act and the suppression of the issuance of fraudulent divorces. In particular, he noted that "the Association has done much toward weeding out of the profession disreputable members and those practicing without licenses." Throughout the occasion's lengthy proceedings, however, no reference was made to any part played by the Association in the selection of judges (*Chicago Legal News*, XXV, 123).

¹⁵*Ibid.*, XIII (October 30, 1880), 134.

Also, in its issue of the following week (p. 163), the *Legal News* said: "The people of Cook County are to be congratulated upon having four as good men elevated to the Bench. They are all honest, able men, and will make good judges."

Concerning the result of the 1886 election, the *Legal News* said:

It is doubtful if in the history of this county there were so many candidates nominated who were all so well qualified. . . . If the judges of either party had been elected, we should have had an able, independent and honest judiciary.¹⁶

EARLY TRADITIONS OF JUDICIAL SELECTION

Several other circumstances that tended to foster the selection of good judges may explain why the Association was slow to take up the matter as one of its official activities.

During the early period there were comparatively few courts of record and a vigilant daily press brought each judge's activities, private and public, under searching scrutiny. The newspapers continuously advocated the ideal of an upright judiciary. This constant publicity of incumbents and aspirants minimized the likelihood that unfit candidates would be elected.

Another factor was a strong tradition that judges who had given satisfactory service, irrespective of their political affiliations, should be re-elected. This tenet was basically the same as the objective which the Bar sought—the selection of judicial candidates for merit only.

During the early period this principle was generously applied and became firmly rooted as a practical policy for political action. It is interesting to notice from Table VII the number of re-elections accorded to the judges who were in office prior to 1887, the year in which the Bar Association inaugurated its judicial primaries. It is a fact that not one of the judges who held office during the period from 1870 to 1887 was denied *renomination* by the political parties. The first failure to *re-elect* a sitting judge occurred in the bipartisan Circuit Court contest of 1879. The Democratic ticket triumphed, declared the *Times*, largely because the Republican managers had forced a partisan issue.¹⁷

During this period the political leaders appear to have adopted a policy of coalition nonpartisanship for contests involving a single office and to have drawn partisan lines for offices filled at the general elections when national party spirit was at high tide. The four Superior Court judgeships involved in the general elections of 1880, 1886, and 1892, were filled only after sharp partisan contests. The partisanship which marked the Circuit Court election in June, 1879, has already been noted. But this contest was the only break

¹⁶*Ibid.*, XIX (November 6, 1886), 65.

¹⁷*Chicago Times*, June 3, 1879.

TABLE VII
RE-ELECTION RECORD OF COOK COUNTY JUDGES HOLDING OFFICE
BETWEEN 1870 AND 1887

Judge	Party	Court	Took Office	Number of Times Re-elected
Joseph E. Gary.....	Republican	Superior	1863	7
John A. Jamieson.....	Republican	Superior	1865	2
Erastus S. Williams.....	Democrat	Circuit	1867	1
M. R. M. Wallace.....	Republican	County	1869	1
William W. Farwell.....	Republican	Circuit	1870	1
Henry Booth.....	Republican	Circuit	1870	1
John C. Rogers.....	Democrat	Circuit	1870	3
Lambert Tree*.....	Democrat	Circuit	1871	1
W. K. McAllister.....	Democrat	Circuit	1875	2
Murray F. Tuley.....	Democrat	Circuit	1879	4
Henry M. Shepard.....	Democrat	Superior	1883	3

*Resigned while in office.

in the series of nonpartisan coalition elections which marked the regular Circuit Court elections in 1870, 1873, 1885, 1887, 1891, and 1897.

It thus appears that prior to 1887, when Chicago was still comparatively "small," the tradition of nonpartisanship and the sentiment that good judges were entitled to renomination and re-election, together with the critical publicity which the Bench received, quite effectively guided the process of judicial selection. As will be pointed out presently, the process was aided by lawyers acting as individual citizens and by informed, but concerted, action of the Bar as a group. The interest of the Bar became systematized, however, when the Chicago Bar Association conducted its first "Bar primary" in 1887. The success of that effort evidently convinced the Association of the possibilities inherent in the Bar primary as a practical means for the Bar, under the Association's auspices, to participate in the process of judicial selection.

CHAPTER V

THE BAR ATTEMPTS TO TAKE A HAND

DIFFICULTIES ENCOUNTERED IN THE FIRST JUDICIAL ELECTION UNDER THE CONSTITUTION OF 1870

For a fairly comprehensive cross-section of the forces that have characterized the process of judicial selection in Chicago, we may turn to the election of July 2, 1870. The succession of events leading up to that occasion graphically presents the Bar's motives for participating in judicial selection, the difficulties the Bar had in agreeing upon a method of procedure, and the clash of other interests which had a stake in the contest. The events of this first campaign under the new constitution also foreshadowed the difficulty of selecting well-qualified judges that was to develop in the rapidly growing community during the years to come.

Hardly secondary to the adoption of the new constitution was the issue of whom to elect for the new judgeships. Only three members of the Bench of five judges were to be chosen (the judge of the Circuit Court then existing and the judge of the Recorder's Court of Chicago had been constituted as part of the new tribunal) and it was provided that "in the County of Cook no elector shall vote for more than two candidates for circuit judge."¹ This provision assured that there would be at least two nominees from each party and made a bipartisan division of the new Bench inevitable from the start.

What appears to have been the earliest effort to nominate candidates for the new judgeships was a "call" circulated among members of the local Bar for a meeting to be held Saturday, May 21, in the Circuit courtroom. Bearing the date of May 18, the call was published in the press of May 20 and read as follows:

We, whose names are hereunto subscribed, members of the Illinois bar, citizens and practicing attorneys in Cook County, feel the coming election of three judges of the Circuit Court to be an event of much importance, both to the public and to the profession.

It is desirable that the men chosen shall be men of undoubted legal attainments, and of the highest type of personal integrity.

Such men we need, and we believe the people will elect none other knowingly.

Believing that political conventions cannot make a man fit to be a judge who otherwise is not, and that no party conventions should be called under existing circumstances to nominate men for purely judicial positions, where such nominations will have to be ratified or rejected at the same time the new constitution is (which is made for the whole people, and not for a party), we

¹Section 7 of the Schedule, Constitution of 1870. This was called "minority representation by the limited vote," and was the method adopted in New York for the election of delegates at large to the New York constitutional convention of 1853. It was also used in Pennsylvania in the election of two jury commissioners in each county (*Chicago Times*, May 16, 1870).

call for a meeting of the bar, to be held in the Circuit courtroom on Saturday afternoon, May 21, at 2 o'clock, to recommend such men as are deemed best fitted for the position, irrespective of party, for the election before the people on the 2d day of July, believing that a generous public will endorse our action at the polls on that day.

We urgently ask every member of the bar to be present.²

The "open letter" also appears to have been a favorite device. In fact, the *Times* of May 21 published an "open letter" to Lambert Tree, dated May 17, requesting him "to permit the use of your name as a candidate for Circuit judge of this county at the approaching election." The letter was signed by eighty-eight "members of the Chicago Bar and other citizens of Cook County." In the same issue was printed Mr. Tree's acceptance, subject to the following proviso:

I deem it proper, however, to say that I have learned during the day that there is in circulation a call for a meeting of the members of the Bar, to take action in regard to the selection of candidates and that any appropriate expression of opinion on their part will command my respect.

In calling a meeting of the Bar to recommend candidates for the new judgeships, the Bar of Chicago was pursuing a practice that was fairly widespread at the time³ and which, also, was not counter to current political custom. This conclusion seems justified in view of the support which the plan proposed in the call received from the press. On May 19 the Republican *Chicago Tribune* had suggested editorially that the voters would listen to the recommendations of the Bar if the lawyers could get together and make some.

²*Chicago Times*, May 21, 1870. This "call" is significant for several reasons. It points unmistakably to a practice, then widespread, of permitting the members of the Bar to "recommend" candidates for the Bench. It appears that such recommendations came from informal conventions of Bar members or took the form of open letters to the desired candidates published in the daily press. The "call" in question evidently was intended to result in a nominating convention similar to the one held downstate a month later. A *Times* dispatch stated that "a call has been issued for a convention of delegates of the Bar in the several counties of the second judicial district, to be held at Pana, on the 21st inst. for the nomination of a judge of the Supreme Court. It is without distinction of party. . . . Numerous attorneys in each county have signed the call" (*Ibid.*, June 18, 1870).

³The "open letter" was used by the Bar in other parts of the state to nominate judicial candidates in the same election. The *Chicago Tribune* of April 23, for example, reported that, "On the 29th of last month (March, 1870) the bar of Jersey County, Illinois, united in a letter to the Hon. Sidney Breese requesting him to permit his name to be used in connection with the office of Judge of the Supreme Court for the First Grand Division." The article concluded with Judge Breese's reply, accepting "with grateful acknowledgments," the tender of support for his re-election. His letter was addressed to three individuals and three partnerships, or a total of nine persons, who evidently comprised the "Jersey County Bar" of that day. A Springfield item in the *Times* of May 18, stated that, "a letter, signed by nearly or quite all of the members of the bar of the 30th judicial district, has been presented to Hon. John A. McClernand, requesting him to become a candidate for the office of judge of this circuit, to fill the vacancy caused by the resignation of Hon. B. S. Edwards."

The Democratic *Chicago Times*, in its issue of May 21, observed:

. . . In our opinion—and that seems to be the general public opinion—the less partisan politics have to do with the choice of these judicial officers the better. This is the opinion of those who have addressed Mr. Tree and Mr. Tree has placed himself in that attitude by his response to them. This is a good start. Let us have a single ticket, of men equally as good as Mr. Tree, brought out in a proper manner, on which the political parties shall be fairly represented and which by its excellence shall command unanimous election.

It is noteworthy, moreover, that the call was signed in the words of the *Times*, “by numerous prominent gentlemen . . . of both political parties.” The meeting was sponsored, in fact, by upwards of 128 individual attorneys and forty-two law firms. The list included many persons who were then or later prominent in public life. In particular, we should notice that in the list were the names of many of those who four years later organized the Chicago Bar Association.⁴

From a number of standpoints, therefore, the call for the May 21st meeting represented the desires of the leading members of the Bar and to a certain extent those lawyers who were influential in the political affairs of the city at the period.

The reasons for participation of the Bar in judicial nominations were stated by Judge Joseph E. Gary, the chairman of the meeting, whom the *Times* quoted indirectly as follows:

If the community could be satisfied that there was a fair and unbiased expression of the opinions of the bar as to who should be nominated, it would have very great, if not overwhelming, weight with the voters of the county. Although there was no constitutional provision or statute to prevent anybody from being elected a judge, yet the common usage and the necessity of the case had fixed it that the judges shall be elected from the bar. The community knew that the bar knew each other better than anybody else knew them and if there was to be a fair and unbiased expression of the opinion of the bar, it would undoubtedly have very great weight.⁵

A plan was then proposed by John Lyle King⁶ that the Bar hold an election by ballot on a designated day, when every member of the Bar could vote his preference. Mr. King read a written document elaborating the suggestion which, as he explained, was modeled after that adopted by the Young Men's Association in the election of its officers.

Several objections were made, however, to the plan as outlined by Mr. King. In case of the nomination of the three highest out of twenty candidates, J. H. Roberts pointed out, some of them would

⁴Among those associated with the founding of the Chicago Bar Association were William C. Goudy, Thomas Hoyne, Robert T. Lincoln, John N. Jewett, and Wirt Dexter. Other prominent names in the list included those of Sidney Smith, Carter H. Harrison, Harvey B. Hurd, Elliott Anthony, B. D. Magruder, Murray F. Tuley, J. C. Knickerbocker, Elbert H. Gary, L. L. Coburn.

⁵*Chicago Times*, May 22, 1870.

⁶John Lyle King had been city attorney under Mayor John Wentworth in 1860.

receive not more than one-fifth or one-sixth of the total vote of possibly three hundred. In order that the preference of the Bar should have some weight in the community it ought to appear that persons receiving those votes received a majority of the whole Bar. He then suggested the modification that if no three candidates received a majority on the first ballot, a second ballot should be held from which all candidates who failed to receive a stipulated number of votes would be omitted.

Another objection was made that nominations should not be made in that meeting, since a clique might "put over" a candidate by a prearranged plan. A suggestion, that a committee be appointed to draft well-qualified candidates, was denounced as being a limitation on the right of each individual to vote for any candidate, and also as being unworthy of the office. It should not be necessary for the nominations, "with hats in hand," to go about seeking candidates, especially since the offices paid as much or more than most lawyers were then earning!

From the reports of the proceedings in the press, one obtains the impression that the lawyers' innate love of disputation obtained the upper hand. Amendments were amended and attempts to unsnarl the resulting parliamentary tangle created confusion which nearly broke up the meeting. A compromise was at last effected, whereby candidates proposed at that session would be voted upon at an election or Bar primary to be held a week hence, and the results of that balloting would be announced at an adjourned meeting to be held on May 30.

The balloting at the primary on May 28 proved to be the largest expression of opinion the Chicago Bar had ever given. Voting continued practically all day with a total of 366 votes cast.⁷ But the circumstance foreseen by Mr. Roberts materialized, for the votes were distributed among sixty-nine candidates and none received a majority of all votes cast.

When the results of the primary were presented at the adjourned meeting on May 30, the problem remained unsolved as to how to select the nominees. The Bar had expressed itself, but so wide a divergence of preferences had weakened the moral force of the movement. Its prestige was further impaired by the withdrawal of John N. Jewett, who had led the poll, and had fallen only sixteen votes short of a majority. Three other candidates also withdrew their names.

The meeting again disputed over a method for making the nominations. One proposal was that the four persons receiving the highest votes be declared to be the nominees of the Bar. As a

⁷*Chicago Tribune*, May 29, 1870. Among the proposed nominees was Myra Bradwell, editor and publisher of the *Chicago Legal News* and ardent feminist. Her name had been jocularly proposed at the meeting on the twenty-first.

substitute John Lyle King proposed that the two Republicans and the two Democrats receiving the highest votes be declared to be the choice of the Bar. These were Henry Booth and George Payson, Republicans, and Murray F. Tuley and John S. Rogers, Democrats. Booth, Tuley, and Rogers had ranked second, third, and fourth in the Bar primary. Payson had stood eighth (receiving only 52 out of the 366 votes cast) and, under King's plan, would have been selected over Lambert Tree (who stood sixth with 83 votes and for whom the nonpartisan petition had been circulated two weeks earlier). In urging the adoption of his substitute motion Mr. King declared, apparently somewhat officiously, that of the large number of lawyers who had been voted for, not one was a proper man for the office. By adoption of his substitute, he said, the whole matter would be set at rest.⁸

Without further discussion of the matter, Obadiah Jackson, who had been substituted as teller in the Bar election when W. C. Goudy had declined to serve, moved that the meeting adjourn *sine die*. His motion took precedence over all other proposals and the resulting vote produced a 68 to 68 tie. When the chairman, former Senator Doolittle, voted in the affirmative, the meeting was adjourned without achieving the purpose for which it had been called.

These proceedings are historically significant for three reasons: the Bar primary of May 28 appears to have been the earliest application of this plan in Chicago; the case for the Bar's participation in judicial selection was fully stated there and has since remained substantially unmodified; and the differences of opinion as to methods of procedure which developed in the meetings have continued among members of the Bar until the present time. In spite of inconclusive action, however, these efforts were not without effect in the ensuing contest, as we shall now attempt to show.

With the judicial election barely a month distant and no candidates actually nominated, another series of developments occurred which interest us here by reason of the influence which the Bar's abortive effort appears to have had on them.

The first movement was another "open letter" published in the press of June 3. Addressed to "The Hon. B. F. Ayer, Hon. S. B. Gookins, and Lambert Tree, Esquire," it requested them to permit their names to be used as candidates for the new judgeships. The petition was signed by twenty firms and seventy-one individuals, both lawyers and laymen.⁹

⁸*Chicago Times*, May 31, 1870.

⁹Among the names were several which have been historic in Chicago's annals: C. B. Farwell; Field, Leiter & Co.; Murry Nelson, N. K. Fairbank, Emory A. Storrs, Solomon A. Smith, and George M. Pullman; Hibbard and Spencer; and D. A. Gage (who as city treasurer three years later defaulted to the extent of more than half a million dollars).

This movement to draft three candidates was cordially supported by both the *Tribune* and the *Times*, which editorially called upon "leading citizens" and "leading members of the Bar" to propose a slate for the new court. This circumstance is especially remarkable, for the two publications were violently partisan, and usually were on opposite sides of the political fence. The Republican *Tribune* indorsed the proposed candidates in the highest terms, in spite of the fact that two of them were Democrats. Strongly advocating strict nonpartisanship in judicial selection, the Democratic *Times* hailed the plan as a way to avoid the "enginery of the partisan caucus," and the "scramble among police court barristers."¹⁰ The fly, or rather the pair of flies, in this ointment, however, was the refusal of "the Hon. B. F. Ayer and S. B. Gookins" to run.

Nonpartisan efforts to nominate candidates having thus failed, the next developments were entirely partisan. They were significant on account of the diversity of opinion which existed among the party leaders as to the method of nominating judicial candidates.

The Republicans were the first to swing into action. A party convention was held on June 14, the preamble of the call stating that this method was the most satisfactory way in which to make nominations.¹¹ The convention nominated first W. W. Farrell and then Henry Booth—men who had stood sixteenth and second, respectively, in the Bar poll of May 28.

Then occurred an instance of political utopianism that is almost unbelievable when the subsequent history of the same party is borne in mind. Meeting the day after the Republicans had made their nominations, the Democratic County Committee voted with only one dissenting voice not to nominate candidates for either the

The list included such leaders of the local Bar as the following: W. F. Coolbaugh, Grant Goodrich, Wm. C. Goudy, John N. Jewett, Melville W. Fuller, Robert T. Lincoln, Wirt Dexter, and General John L. Thompson. Mr. Coolbaugh had taken a prominent part in the framing of the constitution. Mr. Goudy was later elected first president of the Chicago Bar Association. Mr. Jewett had declined the Bar's nomination. Mr. Dexter had proposed the addition of a nominating committee to John Lyle King's Bar primary plan. It is perhaps noteworthy that Mr. King's name was not on the list.

¹⁰June 2, 1870.

¹¹The plan for partisan nominations drew scornful fire from the Democratic *Chicago Times*, which remarked in its issue of June 6, 1870:

"This is the first movement of the sort in any quarter. The Democracy with very great unanimity, have deprecated any connection of politics with these judicial elections and have stood ready to support any non-partisan movement that would assure the choice of men eminently fit for the judgeships without regard for their political predilections. We trust the Democracy will not imitate the evil example of the Republican partisan leaders and thus avoid the responsibility of dragging the election of the judiciary into the mire of ward partisan caucuses. . . . It is in the power of the Democracy and the better part of the Republican party, joined for this purpose, to rescue the judicial elections from partisan-caucus control, and to place upon the bench men fit to be judges."

new judgeships or for the Supreme Court. This action was taken notwithstanding the fact that a petition, signed by eighty Democrats, demanded that a nominating convention be held. In an address to the "Democracy of Cook County," the Committee explained its stand thus:

. . . . After mature deliberation we have decided that no interests of the party will be subserved by the calling of a convention. . . . The matter of the constitution presents no party issue. . . . While having, as individual members of the democratic party, insuperable objections to the nomination of partisan candidates for judge we are not governed by our own convictions but feel satisfied we are carrying out the wishes of the great body of the party we represent in declining to call a convention to nominate judges. . . . There is a growing desire, not only with the Democratic party, but with the public generally, to see our judiciary elevated above the baneful influence which connection with political parties engenders. We believe that the candidates for judicial offices should be chosen on the ground of their personal merit and legal qualifications, rather than on the ground of their political associations.

We do not concur with the opinion that the action of the Republicans in nominating candidates for judges on political grounds renders it necessary for the democracy to do likewise. Their nominees will not be supported by democrats on the ground of personal merit, but opposed on account of their political connections. The only issue raised by the republican nominations is that of partisan or non-partisan choice of a judge. It is one which Democrats can pass upon at the polls without the intervention of a Democratic convention.¹²

Whatever may have been the motives of the official committee, the Democratic generals appear to have taken a position too far advanced from their rank and file. Promptly a faction of the party called a Democratic judicial convention for June 24.¹³

This "bogus" convention is worthy of notice not only because one of its nominees was elected to the new court, but also because of the sentiment expressed by its members in opposition to nonpartisan judicial nominations.

In his keynote address Judge Van Buren stated the time-honored

¹²*Chicago Times*, June 18, 1870. In keeping with the spirit of this action, and after receiving an open letter from more than one hundred lawyers in Kankakee, Dupage, and Cook counties urging him to run, Judge W. K. McAllister, a Democrat, announced himself as an "independent" candidate for judge of the Supreme Court. It is noteworthy that his communication was addressed to "The Gentlemen of the Bar." In reporting the action of the Democratic county committee against calling a convention, the *Tribune* alleged that the move was motivated in part by political expediency, for, it argued, a partisan nomination might weaken Judge McAllister's chances in the race for the Supreme Court.

¹³The call for this "bogus" convention, so dubbed by the *Times*, was signed by ninety-six persons. It included the names of Obadiah Jackson, who had moved adjournment of the Bar's meeting on May 30; Carter H. Harrison, who later became mayor; Francis Adams, M. F. Tuley, and T. A. Moran, who later became judges of the same court; Israel N. Stiles, who was to be seventh president of the Chicago Bar Association; and also John G. Rogers and Eben F. Runyan, the candidates nominated by the convention.

The *Times* was especially bitter against M. F. Tuley, whom it charged with being responsible for the insurgent movement because he wanted to be a judge himself, and who, it claimed, was not a Democrat at all, for "in 1864 he stood with the supporters of A. Lincoln" (issue of June 23, 1870).

TABLE VIII
COOK COUNTY JUDICIAL ELECTION OF JULY 2, 1870

Candidate	Vote	Sponsor	Attitude of Press		Rank in Bar Poll of May 28
			For	Against	
Supreme Court (one to be elected):					
Hitchcock	10,150	Republican	<i>Tribune</i>	<i>Times</i>	.....
McAllister*	12,380	Independent	<i>Times</i>	<i>Tribune</i>	.....
Circuit Court:					
W. W. Farwell*	10,601	Republican	<i>Tribune</i>	<i>Times</i>	16
Henry Booth*	9,871	Republican	<i>Tribune</i>	<i>Times</i>	2
John G. Rogers*	6,763	Insurgent Democrat	<i>Tribune</i>	.....	4
E. F. Runyan	5,971	Insurgent Democrat	.....	<i>Tribune</i>	22
Lambert Tree	5,838	Independent	{ <i>Times</i> <i>Tribune</i>	.....	6

*Elected.

reason for partisan judicial nominations. Caucus nominations are one of the cherished uses of the party, he declared, and any other form of nomination is irregular, disorderly, and antidemocratic.¹⁴

Yet an effort was made even in this convention to have the assembly declare against partisan nominations. George A. Meech, who had taken an active part in the Bar's adjourned meeting of May 30, offered a resolution that "it has ever been the sentiment of the Democratic party that judicial offices should not be the subject of partisan caucus and such is the sentiment of this convention." A scene of some confusion followed. Amid tumultuous cheering, the chair declared the resolution out of order. An appeal from the decision of the chair was lost amid great clamor. The convention then proceeded to nominate, in order, E. F. Runyan and John G. Rogers, who had stood twenty-second and fourth, respectively, in the Bar poll of May 28. Judge Van Buren had placed Mr. Rogers in nomination at the Bar meeting of May 21.

The outcome of the election, in terms of important factors in the campaign, was as shown in Table VIII.

The fate of the two independents should be noticed. The victory of the Independent McAllister over the Republican Hitchcock for the Supreme Court was undoubtedly due in part to the reputation McAllister had made as judge of a lower court, and to the united support which he received from the regular and insurgent Democratic factions. The candidacy of Lambert Tree, however, more accurately indicates the usual lot of political independents in Chi-

¹⁴*Chicago Times*, June 25, 1870.

cago. Although doubly indorsed by leading citizens and with united support of the press, he polled the fewest votes of any man in the race.

Notwithstanding the Bar's seeming failure, its efforts appear to have been influential in several respects. The call for the meeting on May 21 had sharply raised the matter of fitness for the new offices. The parties were consequently forced to face the issue thus projected into the campaign. While the press had criticized the inability of the Bar to agree upon a nominating procedure, it gave wholehearted support to the principle of nonpartisan nominations. And the poll of the Bar, despite its inconclusive character, had served to give an objective ranking to the various aspirants. Furthermore, it does not seem to have been a matter of sheer coincidence that all four of the men who ranked highest (of those who did not withdraw) in this poll, were subsequently elected to the bench.¹⁵

Another interesting point to notice is that the plan of holding a formal vote among members of the Bar—the essence of the Bar primary as later developed—was proposed, apparently for the first time in Chicago, by John Lyle King. The requirements of having the nominations made by majority vote, and by a runoff election (should such be necessary), were also suggested at this time. These elements were to be incorporated into a complete Bar primary plan twenty years later.

¹⁵Henry Booth, M. F. Tuley, John G. Rogers, Lambert Tree.

CHAPTER VI

THE BAR PRESENTS THE JUDGES FOR RE-ELECTION

THE NONPARTISAN ELECTION OF 1873

Probably the only simon-pure nonpartisan movement in Chicago's political annals occurred in connection with the Circuit Court election of June 2, 1873. On this occasion the leaders of the Bar were associated with the political, business, and professional leaders of the community in a plan to re-elect the five incumbents¹ of the Circuit Bench.

The campaign was devoid of partisanship, except for an independent, "Slippery Samuel" Ashton, who was declared to be the candidate of the German lager-beer party.² In an open letter "to the electors of Cook County" the five incumbents announced themselves as candidates for re-election on a common ticket. They requested support irrespective of political opinion, and announced the appointment of a committee to conduct their campaign.

The letter follows:

The undersigned, the present judges of the Circuit Court of Cook County, whose elective term of office will expire on Monday, June 2, 1873, hereby announce themselves as candidates of re-election.

This announcement is made after consultation with very many of the electors of the county, who seem to feel the sentiment of the people of Cook County, is decidedly adverse to the calling of party conventions, or any convention for the nomination of candidates.

Fully mindful of the generous confidence reposed in us heretofore, by our election to the position on the bench we now hold, and conscious that we have done our best to serve the whole people to the utmost of our ability, we have resolved to place our names before them again, on a common ticket, embracing the names of all the present judges of the Circuit Court, and ask their suffrages, irrespective of political opinions.

Grateful for the honor conferred by the people in the past, we feel assured that their judgment at the polls, on the day of election, will be governed by an earnest desire to do justice to all.

We have selected a number of our friends, and will confer with others, and announce executive committees for the various wards and towns of Cook County, and we ask such co-operation as those who may be announced are willing to give.³

The campaign committee listed over six hundred persons prominent in the legal, business, and public life of the city. It contained the names of practically all the political leaders and prominent officeholders, including committeemen, aldermen, county commissioners, representatives in the general assembly, etc. In this way

¹Republican judges, E. S. Williams, Henry Booth, and W. W. Farwell; and two Democrat judges, John G. Rogers, and Lambert Tree.

²*Chicago Times*, June 1, 1873.

³*Ibid.*, May 24, 1873.

the judges' political strategists, with great sagacity, appear to have pledged the support of all but one of the political factions then active on the local scene.

The *Times* expressed the attitude of the press in the following heading of the news article announcing the plan:

Plenty Good Enough. All Reasonable Men Are Satisfied with Our Present Circuit Judges. Their Official Appeal to the People Whom They Have Served.⁴

That the members of the local Bar had a hand in the plan appears from the report of a "meeting of citizens" held in Martine's Hall, in Ada Street, on Saturday evening, May 31 (the election occurred June 2) "to discuss the coming judicial election."⁵ Judge J. B. Bradwell was chairman. The meeting was addressed by several speakers, two of whom referred to "a meeting of the bar," and "the vote of the bar" concerning the incumbents. The meeting also adopted a resolution in which occurs the phrase, "our present judges of the Circuit Court *presented by the members of the bar* for re-election. . . ." What action or vote the Bar took is unknown, for a careful search of newspaper files for a considerable period in advance of this meeting disclosed no account of the action referred to.

Notwithstanding the injection of the "temperance issue" into the campaign, the movement resulted in the re-election of the five incumbents. Ashton, the independent, polled 6,805 votes, as against 10,075 for Henry Booth (Republican, but who had also been indorsed by the temperance party), low man on the winning slate, and 16,163 for William W. Farwell (Republican), the next higher man on the list.⁶

The distinguishing elements of this election—the first contest for the full Bench of the new Circuit Court of Cook County—were as follows: Although as yet without the solidifying force of an association, the members of the Bar, because of an unusual number of favorable conditions, apparently were able to devise and successfully execute a plan for the nonpartisan election of judges. The incumbent judges were divided three to two between the parties, thus maintaining the bipartisan balance established three years before. Four of the five incumbents were evidently sufficiently acceptable politically to avoid serious opposition. Under

⁴*Ibid.*

⁵*Ibid.*, June 1, 1873.

⁶At the citizens' mass meeting a speaker had deprecated the injection of the liquor issue into the situation by an intemperate address of the temperance party! That party's indorsement of Judge Booth, he said, had offended a large party of Germans who would otherwise have voted for him. The temperance issue materialized five months later, however, when the People's party, organized as a protest against Mayor Medill's Sunday closing order, made a clean sweep of the city offices in the municipal election. See M. L. Ahern, *Political History of Chicago*, pp. 33-37.

the tradition of nonpartisanship and the strong sentiment that a good judge should be re-elected, the Bar was able to obtain partisan support to re-elect the incumbents. Moreover, the election was held at a time when no other partisan issue was being decided. The plan enabled the party organizations to avoid the expense of a campaign. An atmosphere of nonpartisanship was maintained, yet the support of practically all major party leaders was retained by having the judges invite them to serve on their campaign committee. Another important factor was the unanimous support of the press. In this situation the rôle of the Bar appears to have been to evolve a formula which effectively neutralized political opposition and at the same time enlisted the support of party leaders, press, and public.

CHAPTER VII

THE FUSION MOVEMENTS OF 1885 AND 1897

The history of the 1873 judicial election was largely repeated in 1885 and 1897. The regular Circuit Court elections in those years were conducted without partisan contests and in each the entire Bench was re-elected without serious opposition. The members of the Bar had a prominent part in each proceeding, with this striking contrast: Whereas they had remained more or less behind-scenes in the earlier contest, it was the members of the Bar in the later campaigns who openly initiated the negotiations for fusion between the Republican and Democratic forces.

In 1885 the part which the members of the Bar played is clearly revealed in the sequence of events. On April 29 the following petition, bearing the signatures of 304 attorneys,¹ was presented to the five judges of the Circuit Court, William K. McAllister,² John G. Rogers, Thomas A. Moran, and Murray F. Tuley (Democrats), and Lorin C. Collins (Republican):

We, the undersigned, members of the Bar of Cook County, being of opinion that in judicial elections party lines should not be strictly drawn, and deprecating a bitter partisan contest at the approaching June election for judges of the Circuit Court of this county, and being also entirely convinced of the fitness for judicial position of the judges now constituting that court, and that the interests of this community would be best served by their re-election, do therefore respectfully request you to become candidates for re-election, and in that event assure you of our hearty and cordial support.³

Two weeks later a meeting occurred at which the following communication was addressed to the judges on behalf of the County Central Committee of the Democratic and Republican parties:

We, the undersigned, being the sub-committees appointed respectively by the Republican County Central Committee and the Democratic County Central Committee, hereby inform you that such committees, being duly authorized to speak on behalf of their respective parties, have decided to call no party convention for the nomination of candidates for the judges of the Circuit Court of Cook County, but desire to have the present bench elected at the coming judicial election without opposition. Speaking for such central committees, we therefore call upon you to place your names before the people at such election, and to select such a campaign committee for such election as may seem to you advisable.

¹The first name on the list was W. C. Goudy, first president of the Chicago Bar Association. Other noteworthy names were I. N. Stiles, L. L. Coburn, C. C. Bonney, C. S. Cutting, J. H. Defrees, Jesse Holdom, George A. Gary, Lyman Trumbull, Carter H. Harrison, Jr.

²Judge McAllister had resigned from the Illinois Supreme bench in 1875 to be elected to the seat vacated by the resignation of Lambert Tree.

³*Chicago Legal News*, XVIII (May 16, 1885), 302.

We trust that this movement will prove a step forward in the direction of removing judicial elections from the turmoil of party politics.⁴

The communication was signed by T. F. Cullerton, Henry Best, Thomas Gahan, Samuel B. Raymond, J. H. Gilbert, and E. J. Meany.

Following the reading of this pronouncement, Corporation Counsel Frederick F. Winston read the previously mentioned petition of the members of the Bar. Judge John G. Rogers, the senior member of the Circuit Bench, responded on behalf of his colleagues as follows:

Mr. Chairman and Gentlemen: We thank you. We thank you as representatives of the party committees and the Bar Association, not merely because you are such, but because of the spirit that prompts such a movement. We feel under extraordinary obligations to you, gentlemen, and can only now say that we thank you for the positions in which you have placed us, and we will do all we can to retain the confidence reposed in us. We now accept your proposition, and we pledge you our hearty cooperation. We feel gratified that at this judicial election we are to be presented to the people as lawyers and judges, and not as politicians. . . .⁴

The result of this fusion movement of the major political parties was the unanimous re-election of these five judges at the election on June 1.

Two circumstances in this election are noteworthy. In the first place, Judge Rogers thanked the representatives of the Bar Association. This is the sole reference to the participation of the lawyers as being an activity of the Association. The Association may have circulated the petition, but the lawyers signed the request as individuals. Second, this election was the first time the two major parties had fused on a judicial ticket involving more than a single office. They did so, it will be noticed, at the urging of the Bar.

Twelve years later the re-election of the incumbent judges via fusion was again accomplished. Several changes had occurred in the election situation meanwhile, which gives this contest and its successful result greater interest from the standpoint of the rôle of the Bar therein. In the first place, the number of the judges had been increased from five to fourteen, and the partisan complexion of the Bench had been radically altered. The roster of four Democrats and one Republican in 1885 was now changed to six Democrats and eight Republicans.⁵

The guiding hand of the Bar appeared in a communication from the Republican Central Committee, through W. H. Baldwin, secretary, addressed to the judges on March 20, as follows:

⁴Both documents were printed in the *Chicago Legal News* of May 16, 1885.

⁵Democrats: Murray F. Tuley, Richard W. Clifford, Francis Adams, Frank Baker, Thomas G. Windes, Edward F. Dunne; Republicans: Richard S. Tuthill, Arba B. Waterman, Oliver H. Horton, John Gibbons, Abner Smith, Elbridge Hanecy, Edmund W. Burke, Charles Neely. Judge Tuley was the only survivor of the earlier Bench.

At a meeting of the executive committee of the Cook County Central Committee, held this day, the following resolution was passed: "Whereas, non-partisan representatives of the bar have requested the Republican executive committee of Cook County to take action with regard to the approaching judicial elections, therefore be it resolved, (1) that this committee indorses and supports the Honorable B. D. Magruder for the Superior Court, (2) to declare for re-nomination of the present judges and pledge them support, (3) favor the bill changing the time of election of Judge Brentano's successor from November to June, and pledge him support for re-election."⁶

On April 10, the following "call of the Bar to the Judges" was issued:

The undersigned members of the Bar of Cook County, hereby respectfully request that you consent to have your names used as candidates for re-election to the offices you now hold, as it is our profound conviction that it is for the best interests of this community that all of the judges of the Circuit Court of Cook County should be retained in office rather than incur the risk to the public interests of party nominations for the judicial offices.⁷

The issue of the *Legal News* in which these statements appeared printed the names of 150 lawyers who had signed the call and stated that "many hundreds more of attorneys" had joined in the petition.

The judges replied to these communications as follows:

We thank you for the confidence you manifest in the present bench.

We are also grateful for the action of the executive committee of the County Central Committee of the Republican party pledging us the support of the Republican party of Cook County for renomination and re-election.

We regard these movements as being prompted by a desire that the election of judges shall not be a matter of partisan contest, which feeling we believe pervades all parties.

We therefore accept the pledges tendered to us, and consent to have our names used as candidates for re-election.⁷

In place of the placid political situation which prevailed twelve years earlier, differences developed between the Republicans and the Democrats over renominating some of the incumbents. The Republican Committee, we have seen, indorsed the entire Circuit Bench of eight Republican and six Democratic incumbents. The Democratic Committee, however, indorsed four Republican and three Democratic incumbents for re-election and opposed the re-nomination of four Republican and three Democratic judges. The Democrats filled out their ticket with seven nominees, only one of whom had previously held judicial office.⁸ Both committees, however, had united on Judge B. D. Magruder for the Supreme Court

⁶*Chicago Legal News*, XXIX (April 17, 1897), 288.

⁷*Ibid.*, XXIX, 312.

⁸The Democratic party indorsed Judges Tuthill, Waterman, Horton, and Haney (Republicans), and Tuley, Adams, and Dunne (Democrats); and opposed Judges Gibbons, Smith, Neely, and Burke (Republicans), and Clifford, Baker, and Windes (Democrats). The new nominees were: Browning, Thornton, Prentiss, Teller, Trude, Fliehmann, and Coburn.

and Judge Theodore Brentano for the one Superior judgeship filled at this time.

In addition to the nominees of the major political parties, six minor parties placed candidates in the field for the election on June 7, 1897. The "Silver and Anti-Machine" faction nominated a full ticket which polled an average of about 10,000 votes. Five "United Silver" nominees averaged 636 votes each, while three candidates for the "Citizens' and Lawyers' Non Partisan League" averaged 744 votes apiece. On the other hand, the seven Democratic nominees ranged from a low of 52,900 to a high of 60,941 votes, and the victorious Republican ticket varied from 75,000 to 85,000 votes for the seven incumbents opposed by the Democrats and 124,000 to 131,300 for the seven who had bipartisan support.

It appears that the members of the Bar had a hand in rolling up these "astonishing" majorities. Early in May some sixty attorneys met at the Rookery in response to a call issued by A. J. Eddy to organize a campaign to help re-elect the Republican nominees. Mr. Eddy declared that he was a Democrat, and thought most of those present were Democrats, but asserted that if they were for the incumbent judges, they would have to support the Republican ticket. A "spontaneous movement," with Eddy as chairman and Lockwood Honore, a Democrat, as secretary, resulted from the meeting, and the personnel of the campaign organization listed many lawyers of both political parties. Many of them, also, were active in the affairs of the Chicago Bar Association and had signed the petition of April 10 to the judges.⁹

What the lawyers did to re-elect the incumbent judges is cited in an address by Judge B. D. Magruder, victorious fusion nominee for the Supreme Court, at a dinner tendered June 25, 1897, by the Chicago Bar Association to the "new" judges. He said:

The recent re-election of judges was due largely to the efforts of the lawyers. The members of the Bar signed written requests to the judges that they would again become candidates. They attended meetings of the political parties and advocated the renomination of the sitting judges. They organized campaign committees, composed for the most part of lawyers, and substituted the same for the regular party campaign committees. Their views had much weight in determining the action of the political leaders and it was through their influence that the judicial campaign assumed to a certain extent a non-partisan character. The press based its almost unanimous support of a non-partisan judiciary upon the expressed judgment of many of the best known of the members of the Bar. Those who have received the benefits of the exertions thus put forth owe a debt of gratitude to their professional brethren.¹⁰

At the same dinner Federal Judge James A. Jenkins, after a biting denunciation of the political servitude under which the elec-

⁹*Chicago Legal News*, XXIX (May 8, 1897), 312. Among the attorneys thus listed were: S. S. Gregory, G. A. Follansbee, J. L. High, T. M. Hoyne, and E. M. Ashcraft—presidents of the Association—and S. P. McConnell, J. S. Miller, A. M. Pence, E. E. Prussing, Sigmund Zeisler, and N. J. Moore.

tive judiciary labored, made this eloquent plea for more active participation by the Bar in judicial selection:

Let the Bar rise to the occasion and to its duties as leaders of thought among men. . . . Let the Bar become the friends and instructors of the people. Teach them the high duties pertaining to the judicial function. Teach them to keep that high office out of the mire of party politics. Teach them that other qualifications than subserviency to party dictation are essential to judicial position; that learning, ability, experience, honesty and perfect fairness are jewels of its crown. Then they will respond to the right and make the judicial position honorable, independent and desirable.¹⁰

In all of these references it should be noticed that no specific mention is made of the Chicago Bar Association as having sponsored the various activities. The Association did not renew its Bar primary appraisals until a year later. The campaign of 1897, in effect, marked the end of the efforts of the local Bar to influence the selective process by direct political action. Thereafter practically every effort to improve the selective process was sponsored or instigated by the Association. There have been no "spontaneous movements" among the local profession since that time. When the Association's Bar primaries were re-established in 1898 they were distinctly advisory and non-political in character. No "political" action, in fact, was taken again by the Association until the Circuit Court election of 1921.

¹⁰*Ibid.*, XXIX (June 25, 1897), 371.

CHAPTER VIII

THE BAR SMASHES A BIPARTISAN SLATE

THE TRIUMPH OF THE BAR—LED CITIZENS' TICKET, JUNE 6, 1887

From the viewpoint of this study, the "special" Circuit Court election of June 6, 1887, was perhaps the most interesting and significant in Chicago's judicial history.¹ During a brief, but spectacular campaign, the community under the leadership of several prominent lawyers rebelled at the questionable integrity of certain bipartisan nominees of the leading political parties. With unwonted alacrity various groups within the Bar outlined strategy, and with the aid of a "Bar primary" conducted by the Chicago Bar Association, successfully placed nonpartisan or "citizens'" nominees in the field. This "Bar primary" inaugurated the practice which has been continued with but few interruptions to the present time. The ensuing victory at the polls marked the only known instance since 1870 when a group of politically "independent" candidates (i.e., those not formally sponsored by the "regular" Republican or Democratic organizations) have been elected to judicial office in Cook County. This circumstance alone entitles the contest to a closer scrutiny for evaluation of the Bar's contribution to the notable victory.

With the purpose of continuing their fusion agreement of two years earlier,² the Republican and Democratic leaders summoned their nominating conventions into simultaneous session at the Sherman House on May 23. Then, as now, the presence of a fusion ticket appeared to assure victory for the "regular" nominees. Two weeks, therefore, probably seemed to allow ample time for the campaign. But the Bar, encouraged by the press,³ was on guard to cope with any untoward eventuality.

¹The election was "special" in that six judges were added to the Circuit Court of Cook County under an act passed May 3, 1887.

²In announcing the renewal of the agreement for the present election, J. L. Woodward, chairman of the Republican County Committee said: "That arrangement worked admirably. Another consideration prompting us was this: we thought that if two conventions were called and twelve candidates were nominated, the Socialists might determine to support six of them, and, holding the balance of power, the men they selected to vote for would be elected. . . . I believe it wise to take this question up on a high plane of action where the Socialists will be powerless to influence it" (*Chicago Tribune*, May 15, 1887).

This reference to the Socialists hinted at the tension that had grown out of the Haymarket Riot of May 4, 1886, and from the famous anarchists' trial which had lasted many weeks and had been recently concluded.

³*The Chicago Tribune*, for example, on May 8, demanded that the Republican and Democratic parties nominate "good lawyers . . . mere political lawyers will not be acceptable. . . . Chicagoans are naturally and very properly proud of their judiciary as it stands. They will not willingly permit any deterioration."

With the party meetings thus scheduled for the twenty-third, Frederick Ullmann, who had recently retired as president of the Chicago Bar Association, had called a meeting of lawyers for May 21 in Judge Shepard's courtroom. It was attended by both Democrats and Republicans. Frederick W. Tourtellotte, W. C. Goudy, S. S. Gregory, A. M. Pence, and others, expressed the view that the fusion nominees should be repudiated if the party committees selected weak candidates. The meeting tabled a motion that an advisory committee of seven attorneys from each party be appointed to confer with the Republican and Democratic county central committees. The view prevailed that no action should precede the party conventions and that steps should be taken then only in case inferior candidates were named.⁴

The party committees duly met on the twenty-third and ratified each other's nominees. There were rumors that a purse of \$5,000 to influence the nominations had been distributed among certain members of the Democratic Committee.⁵ An attempt was made in the Republican Committee to postpone ratification of the Democratic list and thus gain time to investigate the qualifications of the Democratic nominees.⁵ This suggestion was voted down, however, and it was arranged that the full ticket of six names should appear in each party column on the ballot. The "Sherman House ticket," thus nominated, consisted of:

Republicans—Oliver H. Horton, Rollin S. Williamson, Arba N. Waterman.

Democrats—Adolph Kraus, Clayton E. Crafts, W. J. English.

Promptly, a barrage of criticism was aimed at the Democratic nominees.⁶ Unanimously the press condemned the weakness and unfitness of the Democratic candidates and "played up" the alleged corruption. The *Tribune* headline of May 25 epitomized the situation thus:

NOT THE RIGHT MEN

THE DEMOCRATIC NOMINEES FOR THE BENCH CRITICIZED

Lawyers say they are not only legally unfitted for the places, but hint that money was used in the committee. A ticket apt to be put up by a mass-meeting of lawyers or citizens.

Editorially the *Tribune* expressed dissatisfaction with the "non-partisan" system of nominations that had prevailed for several years and laid the problem on the doorstep of the Bar thus:

The nonpartisan theory of judicial nomination and election cannot stand

⁴*Ibid.*, May 22, 1887.

⁵*Ibid.*, May 24, 1887.

"A Poor Judicial Ticket," said the *Tribune* of the ticket; "An Unpopular Ticket and Most Shameful Deal" were the terms applied by the *Daily News*, and "Judicial Degeneracy" by the *Star*; and "The Gang Judicial Candidates" was the *Journal's* characterization.

much more of this sort of strain. Better that the candidates for judges should be nominated in political conventions and fought over on party lines than to have either weaklings or men whose nominations may have been secured by improper means. . . . The Chicago Bar has only to take the matter in hand, selecting good and strong men throughout, to secure their election.⁷

The press exposed the unfitness of the candidates by printing long interviews with prominent attorneys in both parties. Tangible information was also developed that the Democratic nominations had been "peddled," but no specific charge of corruption was lodged against any of the Democratic nominees.

Yet these allegations naturally placed the Democratic nominees on the defensive. The public was in a mood to believe almost anything, for "boodle politics" was the topic of the hour.⁸ Clearly, the situation was one of extreme tension and heightened public interest. It was one of those all too rare occasions in municipal life when only leadership and political sagacity are needed to create a popular issue and to carry a cause to victory. Both leadership and sagacity were to be supplied by the members of the legal profession.

Pending action by the party committees, the meeting of the Bar on the twenty-first had adjourned until May 28. But without waiting for this group to act, a movement was initiated to draft three independent candidates. It began in a meeting held May 25 at the office of Flower, Remy & Gregory. This meeting was attended by Goudy, Pence, and Gregory, who had taken part in the session in Judge Shepard's courtroom. The upshot of it was a "call" issued by Julius S. Grinnell (then state's attorney), I. K. Boyesen, and Richard W. Clifford, to become candidates along with the Republican nominees.⁹

The "call" for the independent candidates was industriously circulated for signatures. It was being handled, reported the *Tribune*,¹⁰ by "some of the best known lawyers in the city." The copy at the Union League Club received over 100 signatures in a day. The copies at the Iroquois (the Democratic club) and Chicago clubs were also extensively signed, as were those circulated among the business men on the street and in the Board of Trade. It was estimated that more than 3,000 signatures were obtained.

Meeting three times in as many days, this group succeeded in practically completing its organization work before the adjourned

⁷May 25, 1887.

⁸The trial of the County Board members who had been exposed by the Murry Nelson—J. Frank Aldrich reform movement of 1886 was in progress during the judicial campaign. News of the trial and of the judicial contest shared big headlines and front-page space.

⁹*Chicago Tribune*, May 26, 1887.

¹⁰*Ibid.*, May 27, 1887.

meeting of the Bar could reconvene on the twenty-eighth. The group's "call" was completed and it had appointed a committee of 50 to take charge of the campaign.¹¹

In view of the week's developments, the meeting of the Bar on the twenty-eighth was awaited with considerable interest and speculation. The lawyers were extremely divided, for the press chronicled the meeting as a riot and "an unroarious mob." The *Daily News* described it as "the so-called meeting of the Chicago Bar—a disgraceful affair in every way." The attendance was declared to consist largely of "howling bullies whose long experience in yelling at saloon political meetings befitted them perfectly for their job of controlling the meeting with noise."¹²

As in 1870, John Lyle King tried to dominate the meeting.¹³ His motion was finally adopted, naming a committee of twelve to report at another adjourned meeting two days later twelve new names (i.e., men not previously in the field of candidates), from which the Bar could select six for indorsement. James P. Root proposed a ballot of the Bar as a substitute to King's plan, but got no second.

The Citizens' Campaign Committee of Fifty, as the Goudy-Pence-Gregory group was now known, made more hay, meanwhile, by continuing in session after the Bar meeting had adjourned. It determined to stand by its candidates irrespective of what action the Bar meeting might take, and elect them. It appointed an executive committee of one member from each ward and country town.

At the meeting of the Bar on May 30, the names of twelve proposed candidates were presented. The press had already shown, however, that all but two of the twelve had declined to run or were ineligible! But the list contained the name of one man, Frank Baker, who became a candidate as a direct result of this negotiation.

The meeting drew "not less than 500" lawyers, which was a larger number than had attended the earlier session. In contrast to the first session, "comparative order prevailed."¹⁴

After much discussion, a compromise resolution was adopted under which the members of the Bar were to select by ballot three Republicans and three Democrats from the twelve candidates proposed at the meeting and from other candidates already in the

¹¹This committee was chairmaned by Erskine M. Phelps. It contained business men, as well as lawyers, including: C. L. Hutchinson, H. H. Porter, N. K. Fairbank, Byron L. Smith, Albert A. Sprague, Robert Law, Elbridge Hanecy, W. D. Kerfoot, H. N. Higginbotham, Frank J. Loesch.

¹²Issue of May 30, 1887.

¹³See p. 35ff.

¹⁴*Chicago Tribune*, May 31, 1887. The *Legal News* (XIX, 303, 311) described these meetings as "the most exciting of any ever held by the Bar of this city."

field. The balloting was to be conducted the next day at the rooms of the Chicago Bar Association. Under the plan all lawyers in Cook County were eligible to participate and each attorney agreed to support the nominees of the poll.¹⁵

The result of the balloting was the indorsement of the following candidates:

Republican—O. H. Horton, R. S. Williamson, A. N. Waterman.

Democrat—Julius S. Grinnell, Frank Baker, R. W. Clifford.

The Republican indorsees were the candidates of the County Republican Committee and constituted the Republican half of the "Sherman House," or fusion, ticket. On the Democratic side Grinnell and Clifford were put into the race by the Citizens'-Lawyers' group and Baker by the Bar meeting and the Union Labor party.

The esteem in which the various candidates and groups held the Bar poll is shown by their actions and their subsequent maneuvers. The Union Labor party, having seen only one of its nominees (Frank Baker) succeed in the Bar primary, immediately held another meeting, at which Horton, Waterman, and Williamson, the Republican candidates, were indorsed, as were also Kraus and English of the "Sherman House" slate, despite their weakness in the Bar primary.

Replying to a letter written to him by the "Citizens'" group before the balloting, Boyeson declined to become a candidate after

"A committee consisting of Frederick Ullmann, Robert Hervey, F. W. Tourtellotte, John Lyle King, and Lawrence M. Ennis conducted the poll. Three of these five men were officers of the Chicago Bar Association—Ullmann, an immediate past president, was then a member of its committee on amendment of the law; Hervey was on the Board of Managers; and King was on the grievance committee.

The "polls" were open from 10 A.M. to 4 P.M. The proceedings had the atmosphere of a formal election. There were judges and clerks to handle the ballots. The various "candidates" were represented by managers and watchers to look after their interests.

Posted on the walls of the polling place were a refusal of James S. Norton to run, and a letter from Thomas G. Windes saying that if anyone asked about his politics, it could be stated he was a Democrat. The following official notice provided a list of candidates and the instructions for voting (*Chicago Legal News*, XIX, 311):

THE BAR MEETING CANDIDATES FOR JUDGES OF THE CIRCUIT COURT

Republican—Oliver H. Horton, R. S. Williamson, A. N. Waterman, P. S. Grosscup, J. M. Longenecker, H. V. Freeman.

Democrats—Frank Baker, J. W. Showalter, Adolph Kraus, C. E. Crafts, W. J. English, Thomas G. Windes, J. S. Grinnell, I. K. Boyesen, R. W. Clifford, C. C. Bonney.

The following gentlemen have declined: E. G. Mason, Francis Lackner, John P. Wilson, George W. Smith, James S. Norton, S. S. Gregory, Henry W. Bishop, F. S. Winston, George F. Bailey, George L. Paddock.

NOTE—Vote for three Republicans and three Democrats. The names of no more than three of either party will be counted on one ballot.

FREDERICK ULLMANN,
Chairman

his defeat by Baker in the Bar poll, and suggested that the group sponsor Baker in his stead. This the group did. Boyeson's declination supplies the sole instance, so far as is discernible in the public record covering more than sixty years, of a candidate's withdrawing from a judicial contest as a result of having been denied the indorsement of the Bar.

Candidate English was reported as having made no effort to get votes in the Bar primary, considering himself already nominated and fearing charges of favoritism and partiality if thus indorsed.

Two days after the Bar primary, Crafts, another Democratic "Sherman House" nominee, withdrew from the fusion ticket because of "the war which has since opened between the different factions of the party and the false position in which he was placed thereby."¹⁶ Crafts had sponsored the bill in the legislature under which the new judges were being elected, allegedly in the expectation of getting one of the offices.¹⁷ Two other stories were circulated regarding Crafts' withdrawal. One was that he had refused to contribute to the Democratic campaign fund, on the ground that he could not afford it. The other was that W. C. Goudy, an organizer of the Citizens' Committee, had persuaded him to withdraw.¹⁸

In the meantime, the Democratic Central Committee had offered to Baker the place on its ticket vacated by Crafts, and the Republican Committee had ratified this action. But Baker refused to accept the Democratic nomination, because success of the Democratic ticket "necessarily involves the defeat of Messrs. Grinnell and Clifford, who with me by the favor of the Bar and the gentlemen associated with them, have been placed upon the citizens'

Showalter and Baker were the only ones of the twelve Bar meeting nominees who sought the office. Baker was also a nominee of the Union Labor party.

A total of 979 votes was cast. This number represented approximately 65 per cent of the Cook County Bar. The following representatives observed the count: Frank H. Collier appeared for the coalition or "Sherman House" ticket; F. W. C. Hayes for Windes; A. W. Green for Grinnell, Boyeson, and Clifford; Charles S. Cutting for Williamson; and a Mr. Roberts for Baker.

The result of the Bar poll of May 31, 1887: The following candidates were indorsed—Republicans from the "Sherman House" ticket, O. H. Horton (first, 923 votes), R. S. Williamson (second, 854 votes), A. N. Waterman (sixth, 463 votes); individual Democrats supported by the Citizens' Committee, J. S. Grinnell (third, 678 votes), R. W. Clifford (fifth, 476 votes); and Frank Baker (fourth, 494 votes) nominee of the Bar meeting and supported by the Union Labor party. I. K. Boyesen, supported by the Citizens' Committee, polled only 321 votes and thereupon withdrew in favor of Baker. Other candidates polled votes as follows: J. W. Showalter (Bar meeting nominee), 219; Union Labor candidates, Thomas G. Windes 261, C. C. Bonney, 39, H. W. Freeman, 448, and J. M. Longenecker, 43; and "Sherman House" Democrats, Adolph Kraus, 100, C. E. Crafts, 100, and W. J. English, 74.

¹⁶*Chicago Tribune*, June 3, 1887.

¹⁷*Chicago Journal*, June 2, 1887.

¹⁸*Chicago Tribune*, June 3, 1887.

ticket." He stated, in addition, that he would continue to decline any nomination that did not include "every name upon the citizens' ticket."¹⁹

Even though a short time now remained for the campaign, vigorous measures were taken to rally votes for the Citizens' ticket. Led and aided by members of the Bar, the Citizens' Committee engineered the pre-election drive. It was termed a canvass rather than a campaign.

The partisan alignment of candidates, together with their respective standing in the Bar primary and the outcome of the election, is shown in Table IX.

TABLE IX
POLITICAL ALIGNMENTS IN AND RESULTS OF THE JUDICIAL ELECTION
OF JUNE 6, 1887

	"Sherman House" Ticket		Citizens'	Union Labor	Socialist	Vote in June 6 Election	Rank in Bar Ballot
	Repub- lican	Democ- ratic					
Horton.....	x	x	x	x	—	44,477	1
Williamson.....	x	x	x	x	—	44,508	2
Waterman.....	x	x	x	x	—	44,465	6
Baker.....	—	—	x	—	x	44,752	4
Grinnell.....	—	—	x	—	—	33,188	3
Clifford.....	—	—	x	—	—	32,633	5
Kraus.....	x	x	—	x	x	13,626	11
English.....	x	x	—	x	x	13,806	13

The extent to which the members of the Bar were factors in this campaign is evident throughout. The committee itself, it will be recalled, was launched by lawyers. It became a citizens' movement when business men were added to its executive body. On June 1, Mr. Ullmann—though no longer representing the Association—appointed a group of twenty-five lawyers to work with the Citizens' group. On June 2, this Bar campaign committee named John H. Hamline and Adolph Moses to prepare an election circular, which all lawyers were requested to circulate among their clients. On June 3, twenty "young lawyers" were drafted to distribute marked ballots. On Saturday, June 4, mass meetings, arranged by the Citizens' Committee at the 12th Street Turner Hall, at Aurora Turner Hall, and at North Avenue and Sedgwick Street, were addressed by lawyers.

The election was a complete rout for the candidates not supported by the Citizens' group. The Republican nominees and Baker, Democrat, polled an average of 44,551 votes; Grinnell and Clifford averaged 32,910 votes; while Kraus and English, the original Demo-

¹⁹Ibid.

cratic fusionists, with Union Labor and Socialist support, averaged only 13,716.

The chief facts of this episode, from the standpoint of the rôle of the Bar in judicial selection, were:

1. That an independent movement, largely sponsored by lawyers, defeated two "regular" nominees of a bipartisan slate by the margin of nearly three to one.

2. The members of the Bar supplied the leadership and the backbone of the independent revolt.

What part did the Chicago Bar Association take officially in this campaign? From the public record of events, the sole instance of official participation was the occurrence of the Bar primary of May 31 in the rooms of the Association.²⁰ On May 28 the *Tribune*, in denying a charge that it had led the movement against Kraus, Crafts, and English (it "simply chronicled it") declared that "The Chicago Bar Association has not laid itself open to any charge of officiousness." The members of the several "committees of the Bar" appointed by Mr. Ullmann to co-operate with the Citizens' group, and the personnel of the Citizens' group itself, included many Association members. In line with Mr. Whitman's observation concerning the precarious condition of the organization during this period, the conclusion seems warranted that through its members the Association aided and abetted the movement, but had no "official" connection with it.

There can be little doubt that had not the prominent members of the Bar put independent candidates in the field against the "Sherman House" ticket, the objectionable nominees would have weathered the political storm. With the aid of the independent elements of the community, however, the lawyers succeeded in accomplishing what for Chicago is a political miracle—smashing a bipartisan fusion slate of the "regular" political organizations.

²⁰The official files of the Association during this period were not available. But no reference to the campaign appears in the reports of the Association for the period, as published in the *Chicago Legal News*.

CHAPTER IX

THE BAR CO-OPERATES WITH CIVIC AGENCIES

THE LEAGUE FOR THE ELECTION OF GOOD MUNICIPAL COURT JUDGES (1906)

The selection in 1906 of twenty-eight judges for the new Municipal Court of Chicago presented an unparalleled opportunity for civic service. The tribunal was the first of its kind in the world. As a "poor man's court," which was to touch the lives of hundreds of thousands of people annually, there was every reason why its administrative personnel should be of the highest possible caliber.

The Chicago Bar Association had participated in the long crusade to abolish the odious "justice shops." Through its various committees the Association had helped to establish the new court.¹ After the difficult legal groundwork had been completed, there yet remained the important matter of manning the new Bench with high-minded and well-qualified personnel. With the election for choosing the new judges fixed for November 6, 1906, we find that as early as November 25, 1905, its president, Edwin A. Bancroft, in his valedictory address at the annual meeting, urged that the Association

should not wait for political parties to prepare their slates. It ought at once to lead in the organization of a large general committee . . . for the purpose of arousing public interest, and of calling attention to the qualifications essential to a place on the bench of the Municipal Court.²

The Association indorsed Mr. Bancroft's suggestion, and its Board of Managers, at their next meeting, December 1, 1905, authorized the appointment of a committee of three "to carry out the request of the Association."

Four months elapsed, however, before the Board again took up the matter. On March 20 it discussed three possible plans: (1) to prepare lists for the parties, each list containing the names of 40 to 60 acceptable candidates, with the suggestion that nominees taken from the lists would be satisfactory; (2) to hold the usual Bar primary after the nominations had been made by the parties; (3) to organize a movement for an independent ticket.³

¹See George W. Gale, *Chicago Bar Record*, XVII (1936), 139. In an address to the Union League Club, Hiram T. Gilbert declared that the Chicago Charter Commission, through a committee consisting of John P. Wilson, Murray F. Tuley, John S. Miller, Carter H. Harrison, B. A. Eckhart, and Bernard E. Sunny had had the Municipal Court act drafted and lobbied through the Illinois General Assembly (*Chicago Legal News*, XXXVIII, 287).

²*Annual Report of Chicago Bar Association*, 1905, pp. 5, 6.

³*Minutes of the Board of Managers, Chicago Bar Association*, 1904-7.

No action was taken at that time. But at the next meeting (March 27), a letter from the Civic Federation was read requesting the Association to be represented at a meeting to discuss the new judgeships. A committee of twenty, headed by Edgar B. Tolman, was appointed to represent it. The Board also adopted a resolution which proclaimed the need of highly qualified men for the new Bench and noted the approach of the party conventions, but declared "that it is inexpedient for the Association to make recommendations at this time as to the candidates for the nominations."⁴

By this course the Association avoided political action. Through its representatives in the League for the Election of Good Municipal Judges, the agency which eventuated from the movement initiated by the Civic Federation, it was enabled to co-operate with other civic organizations in a concerted effort to accomplish a single, but all-important objective, namely, to induce the conventions of the political parties to nominate highly qualified candidates.

The Chicago League for the Election of Good Municipal Court Judges was organized by the following agencies: the Civic Federation, the Chicago Bar Association, Union League Club, the Commercial Club, the Chicago Real Estate Board, the Board of Commissioners of Cook County, the Chicago Board of Trade, the Illinois Manufacturers' Association, the Standard Club, the Marquette Club, the Lincoln Club, the Iroquois Club, the Citizens' Association, the City Club, the Hamilton Club, the Illinois Club, and the Young Men's Good Government Club.⁵

The purpose of the League was to make an "extensive investigation into the qualifications of men who would like to be judges, with the intention of preparing recommendations for the guidance of the politicians."⁶ The party forces, however, viewed this new group of political mavericks somewhat askance, for we learn from another paragraph in the same article that:

This seems to be a case of volunteer labor going to waste unless something induces the politicians to change their minds. At the present they say they intend to do the work themselves, and that after they have made up a satisfactory slate for the judicial nominations, considering qualifications and also geographical considerations, the Chicago League for the Election of Good Municipal Judges is welcome to take this list and recommend or condemn it as it may see fit.

THE PRE-CONVENTION CAMPAIGN

It is not known to what extent the League negotiated with the Republican forces. Their attitude toward the issue championed by the League was indicated in a published account that thus far the Republican machine have not decided how they will distribute

⁴*Minutes* of meeting of March 27, 1906.

⁵Civic Federation of Chicago, *Biennial Report* dated May 19, 1907, p. 13.

⁶*Chicago Tribune*, May 30, 1906.

the judicial positions, but will endeavor to do so geographically. . . . The Republicans are insisting on a high standard for this ticket, believing their only chance of electing it depends entirely on the character of the ticket nominated. . . . The Republicans desire to nominate a ticket which can be compared to its advantage with the ticket presented by the Democrats.⁷

The issue of fitness had centered in part around the question of whether any of the former justices of the peace, whom the new court had displaced, should be nominated. The Republicans were reported as having decided that "no justice of the peace now in office shall be renominated."⁸ Of the minority party it was said: "The Democrats will have to nominate some of the present justices of the peace in order to satisfy Kenna, Coughlin, Brennan, and other ward leaders, who have justices to take care of."⁹

Major Edgar B. Tolman, "head of the committee from the Chicago League for the Election of Good Municipal Judges,"¹⁰ appeared before the Democratic "harmonizing committee" at a meeting held July 6 in the Grand Pacific Hotel and strongly urged the Democrats to nominate well-qualified candidates. The following press report of the conference is revealing in the interchange between civic idealists and partisan realists:

What you do now, gentlemen, and what the Republican committee does, will establish the precedent for the new Municipal Court of Chicago. You and your Republican rivals are to decide whether the new courts shall start on the high plane for which they are intended.

To Chairman Tom Carey's question, "What we want to know is if your League will oppose justices of the peace if we nominate them?" Major Tolman replied, "The League has had this subject up. A resolution opposing all justices of the peace was voted down because it was considered un-American. The whole question is one of fitness. Your candidates should all measure up to the standard for Superior and Circuit Court judges. You should consider whether a Municipal Court candidate will be competent to fill Judge Tuley's place. If you have justices of the peace who meet this standard, nominate them."

"Then you won't oppose a candidate just because he has been a justice of the peace?" asked Thomas Dawson.

"Not if he is fit," was the reply.

This is a highly interesting phase of the issue to the Democrats, who will be forced to nominate some justices and police magistrates to keep peace in their own family. Kenna, Coughlin, Brennan and others have been lukewarm of late towards the Democratic county, judicial and sanitary tickets. To get this and other wards for the county, as well as the Municipal Court ticket, the Democrats will have to slate John R. Caverly for Kenna and M. I. O'Donoghue for Brennan.

⁷*Ibid.*, July 5, 1906.

⁸*Ibid.*, May 30, 1906.

⁹*Chicago Tribune*, July 5, 1906.

¹⁰In addition to Major Tolman, the members of the committee were: Abel Davis, Edwin K. Walker, and John W. Eckhart (*Ibid.*, July 7, 1906). Major Tolman was no political novice. He was an active member of the Democratic party. He had served from 1903 to 1905 as corporation counsel, and had been a Democratic candidate for the Superior Court in 1900.

In explaining the necessity for good tickets, Major Tolman told the Democrats that the present movement was unique in that it did not seek to work against political organizations, but with them. He spoke in detail of the urgent need for good judges.

"You set the standard this time," he said. "Other nominating bodies are likely to follow. If an inferior bench be elected, it will be difficult to raise the standard subsequently. This first election is of double importance in another way. The law allows judges to establish their own rules of practice. Moreover, Municipal Court judges will have authority which has been taken away from Superior and Circuit Court judges—the power to charge a jury verbally."¹¹

As finally nominated, however, the Democratic ticket contained nine former justices and five aldermen.¹²

Three weeks later the League issued a list of eighty "known" candidates for the Municipal Bench. It was introduced as "the first definite line-up of candidates. . . . The list is in no sense final, but the League will take the names which it has secured and make recommendations based on the fitness of the candidates for their places."¹³ The important fact about this list is that it appeared well in advance of the party conventions which were to be held August 9.

During the week that preceded the conventions there were several "straws" which pointed to the effects that the League's agitation was having upon the political winds. One was an editorial comment concerning the new judgeships:

. . . . The tickets will be much better than they would have been if so much had not been said about the importance of the Municipal court and the need of good judges. . . . The party which makes the most good nominations will elect the most judges.¹⁴

Three days later the following report appeared concerning the Republican caucus:

Outside advice will be requisitioned in the case of the nominations for municipal court judgeships. The caucus will call for the advice of the lawyers of the city. The subject is already being canvassed by the League for the Election of Good Municipal Court Judges and by the Bar Association and other organizations of attorneys. The reports from these various quarters on the field of candidates will be submitted to the caucus before the slate is finally made up. . . .¹⁵

Two days before the convention the names of the Republican selections were submitted to a

jury of prominent attorneys by State Chairman Roy O. West, State's Attorney John J. Healy and John F. Smulski acting for the Deneen organization.

¹¹*Chicago Tribune*, July 7, 1906.

¹²These candidates were: former Justices A. J. Sabath, M. J. O'Donoghue, John R. Caverly, John K. Prindiville, James C. Dooley, John J. Fitzgerald, Charles H. Callahan, Theodore Mayer, and John A. Mahoney; and Aldermen Charles Werno, William E. Dever, Thomas F. Scully, D. V. Harkin, and J. F. Kohout.

¹³*Chicago Tribune*, July 29, 1906.

¹⁴*Ibid.*, August 2, 1906.

¹⁵*Ibid.*, August 5, 1906.

. . . . Altogether forty names were submitted to the jury of attorneys, which was composed of about thirty well-known lawyers, each of whom individually passed on the candidates. The list which is announced is less than half of the entire number to be nominated, but the others are withheld until the aspirants can be consulted. Some of the men who have been agreed upon by the sub-committee are not aware that they have been selected. . . .¹⁶

The sequel of this story was the news, published on the morning of convention day, that

the Municipal court judges caused the greatest trouble [to the Republican caucus]. Party managers have been running all over the city in the last week trying to persuade highgrade lawyers to become candidates but the majority refused to give up their practice. At that, the politicians believe they have secured a good ticket, although it does not present so many well-known names as they tried to have included in it.¹⁷

The public reaction to the party nominees was discernible in the *Tribune's* post-convention comment, as follows:

In the matter of the municipal court judges, the Republican leaders displayed greater intelligence and regard for public opinion and the independent voter than the Democratic leaders did. If the latter had selected the associate justices with as much care as they did the chief justice [Hiram T. Gilbert], there would have been no fault to find with their slate. There are a few good men among their candidates for associate justices, but the number of inferior—of utterly unfit—selections is scandalously large. . . .

The Republican ticket is not so free from flaws as it should be. It is headed by a man of fine qualities but there are a few of the nominees for associate justiceships for whom better timber should have been substituted. Nevertheless, the selections are better than they would have been if the leaders had been left entirely to their own devices. The voters can, if they please, select from the two tickets a reasonably good set of judges. Probably the Bar Association will give the voters its opinion of the merits of the nominees. There are some of them whom few ever heard of, and information as to their judicial qualifications, if they have any, is much needed.¹⁸

What concrete result had the League for the Election of Good Municipal Court Judges accomplished? From the foregoing brief outline of its preconvention efforts we may infer that the League had little effect upon specific nominations. The difficulty was that

. . . . the two conventions nominated a great many men who have not been under consideration by the League. This organization has a long list of candidates which it has been investigating for several weeks, but a majority of them seem to have been candidates before the wrong aggregation of men. They did not get into the conventions, and now the League has to start all over again with a new set of names.¹⁹

From another standpoint, however, the inference is justified that the League was the means of injecting the issue of judicial fitness into the slate-making process. The scandal of the justice shops

¹⁶*Ibid.*, August 7, 1906.

¹⁷*Ibid.*, August 9, 1906.

¹⁸*Ibid.*, August 10, 1906.

¹⁹*Ibid.*, August 11, 1906.

made the matter of fitness a ripe issue. While it is true that the press fostered the same thing, the League for the Election of Good Municipal Judges became the spearhead behind which rallied the good government forces of the community, including the Bar Association. The instances cited indicate that both caucuses gave heed to the matter of fitness as well as to the usual tests of political availability. The Republicans, under the leadership of the Deneen forces, met the issue and went far to capitalize it in the campaign. The device of submitting their slate, in advance of the convention, to a committee of lawyers was a recognition of the inherent value of having an outside group of lawyers pass upon the candidates.

Was this device merely a political trick? Instead, why did they not utilize the League or the Bar Association as the rating agency? The slowness with which such voluntary bodies necessarily move and the need for immediate action (the convention was only two days' distant), indicate the practical difficulties involved. The Republicans' desire to nominate a well-qualified ticket appears genuine when we remember their efforts to induce well-known attorneys to accept places upon the slate. Also, the Republican party promised in its platform "that its nominees will refrain from participation in partisan politics."²⁰

The Democrats, on the other hand, seem to have paid little attention to the pleas of the League. They were more cautious than usual in pledging their nominees to accept the organization's dictates in matters of patronage.²¹ They appear to have listened to Major Tolman and then followed the customary dictates of practical politics.

However, the preconvention efforts of the civic groups were to bear some fruit in the ensuing campaign.

FITNESS BECOMES A CAMPAIGN ISSUE

In the eleven-weeks' period between the conventions and the November 6 election, the question of who were to man the new Municipal Court overshadowed the contests for state, county, and sanitary district offices, which usually dominate the fall campaigns. Two factors appear to have accomplished this result: (1) The customary political placidity was ruffled by an independent ticket, which had more than the usual third-party virility. The issue of fitness was one of this ticket's keynotes. (2) The lawyers prosecuted the issue of fitness on a triple front. The Chicago Bar Association, the Lawyers' Association—a newly formed rival organization of attorneys—and finally the League for the Election of Good Municipal Court Judges issued several well-timed reports concerning the qualifications of candidates on the respective tickets.

²⁰*Ibid.*, August 10, 1906.

²¹For example, see incident reported, *ibid.*, September 23, 1906.

These reports provided the fuel to make the matter of fitness a burning issue.

The Independence League.—Beginning as a Democrat insurgent movement and abetted at first by William Randolph Hearst, the Independence League placed a complete ticket in the field.²² As the movement progressed the judicial contingent of this group separated from the candidates for the county and sanitary district offices. The Independence League assigned to a committee of lawyers the work of composing its judicial slate. This committee established its own headquarters and conducted a separate campaign for its nominees.

The *raison d'être* of the movement was stated by the committee to be:

At prior elections the managers of the great political parties have recognized and yielded to an overwhelming public sentiment by at least including in their platform a declaration in favor of a non-partisan judiciary. In their selection of candidates they have . . . presented as their candidates lawyers of character, reputation and experience. . . . But in the present instance . . . the bosses have . . . proceeded in the insolent confidence that the people are either too ignorant or too helpless to protect themselves.

The [Independence] candidates have been selected equally from the Democratic and the Republican parties. Not one on the list has in any way or degree solicited our attention or exerted any influence whatever to secure a place upon this ticket. In making each selection every consideration has been wholly subordinated to that of the character and fitness of the candidate. Every one of the nominees has been an attorney in general and active practice at this bar for a number of years past, and has deservedly won for himself the esteem of the bench and the bar for his character and talents.²³

Later the candidates announced, as the basis of their consent to run, that they had not

surrendered their individual political sentiments, are not seeking to serve any political party or ends, and are incurring no political obligation. Those who have been Republicans remain Republicans, those who have been Democrats remain Democrats. They reserve the full and free right at all proper times and places to speak their political sentiments and to co-operate in all matters political with their former political associates. They believe it would be for the public good to have politics expelled from all contests for judicial office, and that such a policy would increase the esteem in which the judiciary of Chicago heretofore has been held.²⁴

²²The *Chicago Tribune*, August 9, 1906, reported the Democratic caucus proceedings as follows: "The caucus had to meet the threat of the Hearst bolt. This the managers affected to ignore. They said they welcomed it and thought it would help, rather than hurt their ticket. . . . 'It is a pretty safe bet that when it comes to election day there will be no Independence League ticket in the field,' said William Loeffler, who, with Roger C. Sullivan, was in control of the caucus. 'The Hearst papers have shifted before and they may again.' . . ."

²³William Ritchie was chairman and Roy D. Keehn was secretary of this committee. The *Chicago Tribune* of September 16, 1906, describes this phase of the Independence movement.

²⁴*Ibid.*, September 19, 1906.

An indicative sidelight on this movement and the position which the League for Good Municipal Court Judges occupied was the incident reported when the Independence leaders invited Gwynne Garnett, Republican, former judge of the Superior Court of Cook County, to be their candidate for Chief Justice. He accepted, reported the *Tribune*, "on the condition that the candidates for associate judges come up to a high standard. At his suggestion the ticket was submitted to some of the lawyers who were leaders in the League for the Election of Good Municipal Judges. When they gave it a clean bill of health, he decided to run."²⁵

The entrance of a third complete ticket also led the League for the Election of Good Municipal Judges not to sponsor a separate slate.

It is announced [continued the same article] that this Independence League ticket will meet the emergency that some members of the League [for the Election of Good Judges] thought had been created by the character of the two regular tickets, which did not meet universal approbation among members of the Bar. For this reason, it is said, . . . the League will content itself by submitting recommendations to the voters based on a choice from the three tickets.

Reports concerning candidates in the campaign.—As soon as the party conventions had completed their deliberations, the Bar Association and the League for Good Municipal Court Judges began to prepare their ammunition for the last stand—advising the electors for whom to vote in the November 6 election. At a meeting of the Association's Board of Managers, held August 10,

The Secretary [C. P. Abbey], and Messrs. Alden and Baldwin were appointed a Special Committee to secure from the candidates for Municipal Court Judgeships and from members of the Association, information relative to the character, qualifications and experience of such candidates; to prepare and distribute among members of the Association, as or before the bar primary ballots are sent out, statements of the facts obtained relative to the character, qualifications and experience of such candidates.²⁶

The Association released the report of this special committee on October 13. It was the first of a series of findings relating specifically to the individual fitness of the army of candidates seeking places on the new Bench. The forthright manner in which the qualifications of the candidates were characterized provoked a storm of rebuttal from party managers and from candidates whose fitness had been challenged. The *Record Herald* of October 14 front-paged the follow-up story thus: "Stir over Bar Report. Classification of Bench Candidates Proves Sensation of the Hour."

While in fact the report was intended to guide the members of the Association in the Bar primary, the publicity given to it un-

²⁵*Ibid.*, September 16, 1906.

²⁶Official minutes of the meeting. At the next meeting a month later, Messrs. Enoch J. Price, Amos C. Miller, Albert M. Kales, and Rufus S. Simmons were added to the committee.

doubtedly assisted in focusing attention on the identity and relative fitness of the ninety-one candidates who sought the twenty-eight places on the new Bench. The report helped to break through the rigidly drawn party lines and turn a spotlight onto the quality of the goods underneath the political labels.

This process was repeated at intervals during the remainder of the campaign. On October 20 the official findings of the Association's Bar primary were announced. Ten days later the Lawyers' Association also held an "open" Bar primary on the theory that the Association's poll was not representative of the whole Bar. The next day the League for the Election of Good Municipal Judges announced its indorsement of thirty-eight candidates (eighteen Republicans, eleven Independence Leaguers, and nine Democrats), "any twenty-seven of whom would be satisfactory."²⁷

These successive broadsides kept the issue of fitness to the fore until the final week of the campaign. While the three reports were naturally not unanimous, these differences contributed to the controversial discussion which followed the publication of each statement. This controversy, in turn, attracted attention to the reports and to the purpose which prompted their publication.

By way of emphasizing the rôle of the Bar in these proceedings, we should call attention again to the personnel of the League's executive committee. Several of its members were not only leading members of the Bar, but were also active in the councils of the Association. The League may be regarded as a tactical device for enlisting the co-operation of several nonpartisan agencies in the crusade for a well-qualified Bench. While the Lawyers' Association was a rival organization, its "open" primary report was in effect another push toward the same general objective of all three units.

The recommendations of the three agencies were identical to a remarkable degree. This is shown clearly in Table X. The Bar Association and the League for the Election of Good Municipal Judges, for example, identically indorsed 26 out of 27 candidates for the associate justiceships; the Bar Association and the Lawyers' Association saw eye-to-eye on 21 out of 27 candidates, and the Lawyers' Association and the League indorsed the same men in 24 instances. The presence of the Independence League candidates tended to lower these agreements. Customarily, the indorsements would have been divided between the candidates of the two regular parties. The excellence of the Independence League's candidates won ten indorsements from the Bar Association, six from the

²⁷No indorsement was made for chief justice, "in view of the high standing of all three candidates." The League's list was published on the authority of an executive committee consisting of Kellogg Fairbank, chairman; W. H. Brown, secretary; and Joseph H. Defrees, Victor Elting, William Duff Haynie, Charles D. Richards, Frank W. Teeple, Horace K. Tenney, Edgar B. Tolman, and O. G. Williams (*Chicago Tribune*, October 31, 1906).

TABLE X
INDORSEMENTS OF THE BAR AND THOSE OF CIVIC ORGANIZATIONS IN THE FIRST MUNICIPAL COURT
ELECTION (NOVEMBER 6, 1906) COMPARED

Group	Indorsements						Identical Indorsements			Indorsees Elected*						Candidates Elected*
	Bar Assn.		Law Assn.		League G. M. J. †		Bar Assn. and Law Assn.		Bar Assn. and League		Law Assn. and League		Indorsees Elected*			
													Bar Assn.	Law Assn.	League G. M. J.	
	R.	D.	I.	R.	D.	I.	Per cent	Per cent	Per cent	R.	D.	R.	D.	R.	D.	
Chief Justice.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
(6 years	4	1	4	6	1	2	67	100	78	4	.....	.....	.....	.....	.....	
Assoc. Jus., 4 years	5	1	3	6	1	2	78	89	89	5	.....	.....	.....	.....	.....	
{ 2 years	5	1	3	6	1	2	89	100	100	5	.....	.....	.....	.....	.....	
	15	3	10	18	4	6	78	96	89	15	1	18	1	18	1	

Key: R=Republican; D=Democratic; I=Independence League.

*No Independence League candidate was elected.

†The League for the Election of Good Municipal Judges indorsed all candidates who passed its standard of fitness; the other groups indorsed only enough candidates to fill the offices.

Sources: Chicago Bar Association Bar Primary report: *Chicago Record Herald*, October 20, 1906; Lawyers' Association Bar Primary Report: *Chicago Legal News*, XXXIX, p. 99; League for the Election of Good Municipal Judges: *Chicago Tribune*, October 31, 1906; Election results: *Chicago Daily News Almanac*, 1907, p. 360.

Lawyers' group, and eleven from the League. It appears that the majority of these third-party indorsements would have gone to the Republicans, for both Bar groups found only four Democrats whom they considered qualified. The League, on the other hand, with its policy of indorsing all those who came up to its own arbitrary standard of fitness, added three more to this list.

The low average caliber of the Democratic contingent may have been responsible in part for the poor showing of that party in the election returns. Its one successful candidate (Thomas B. Lantry) was indorsed by all three groups. He outran the one unsuccessful Republican candidate (F. L. Barnett, Negro) on all three slates by a margin of only 304 votes. The Republican landslide may have been assisted by the presence of the Independence League ticket. The latter slate, however, was evenly divided between Republicans and Democrats. Moreover, the Republican organization was enjoying a period of political dominance. It controlled the state and county governments. So confident was it of winning the fall election, when the tide of political partisanship ran highest, that, against the wishes of friends of the new court, the Republicans scheduled the judicial election for the same date, with the inference that the time of holding the Municipal Court elections could be shifted later on.²⁸

With so many conditions unfavorable for making a good showing—Republican predominance, a weak Democratic slate, and a strong independent movement—it is perhaps gratifying that more than one-half of the successful Republicans bore the Bar Association's indorsement. In a straight bipartisan contest or in a special election it appears that the interest stirred up by the triple attack might have registered more successfully. Particularly would this have been true if the Bar and civic organizations had extended their campaign to ward and precinct work among the voters.

²⁸The friends of the new court had urged that the judges be elected at a time when no other offices were being filled.

CHAPTER X

THE BAR ASSOCIATION ALLIES ITSELF WITH A PARTY MACHINE

THE CIRCUIT COURT CAMPAIGN OF 1921

Without doubt the most successful campaign in which the Chicago Bar Association has ever participated was in connection with the Circuit Court election of June 6, 1921. The campaign resulted in a complete success for the candidates supported by the Association. While this success was due mainly to a fortunate political alliance, the determination and aggressive leadership of the Association was a large factor in shaping the course of events. A résumé of the situation at the time of the campaign and of the efforts exerted by the Association will show the distinctive contribution of the Bar toward the triumphant outcome of the contest.

The Circuit Bench then consisted of five Democrats and fifteen Republican incumbents, all of whom sought re-election. With a few exceptions, the Bench was satisfactory to the Bar. As the election approached, it became increasingly manifest that the customary report upon the candidates following a Bar primary would be wholly ineffective. Many months before the election it was reported that the "city hall" faction of the Republican party, then dominant in local politics, intended to oust all of the twenty incumbents except two who had acknowledged suzerainty to that faction. A clear-cut bipartisan contest for the courts would not have in itself caused concern, for that would be the expected course under the party system.

Allegiance to the "city hall" organization was made the real test of the candidate's fitness for the Bench. The organization intimated that renomination was to be denied one incumbent because he had refused to decide a certain case in its favor. The greatest concern was the reported intention of the group to nominate candidates who were either of unknown fitness or of known unfitness for the Bench.

Ordinarily these designs in themselves would have been sufficient to arouse the Bar to action, for they were direct attacks upon the independence and integrity of the Bench. In view of the political control exercised by the group, they became sinister. Not only did the group have the power to nominate its candidates; through its control of the great patronage offices it could influence enough votes to assure the election of its nominees, if the usual number of voters turned out at the judicial election.

The political power of the "city hall" faction appears in the fact that it had twice in succession elected its candidate for mayor; through a bipartisan system of patronage it controlled the Democratic city council, the governor with the state patronage roll in Chicago was affiliated with it, and it also controlled the Sanitary District. One of its leaders had been elected state's attorney and it thus was in a position to control the machinery of law enforcement. If it could add the Circuit Bench to the list of offices already under its domination, it would control the appointment of jury commissioners and thus complete its domination of the criminal law enforcement machinery; and through the appointment of the South Park Commissioners it would control the sixty-million-dollar expenditure for Chicago's lake front development. It would also control the Juvenile Court and its special machinery for dispensing justice to minors and pensions to widowed mothers.

The disorganization and weakness of the opposing political groups in both the Republican and Democratic parties only added to the likelihood that the "city hall" group would succeed. Normally the opposition of these groups would have helped to preserve the political balance. But, following the overwhelming Republican landslide of 1920, the Democratic organization was both disorganized and discouraged. The other factions of the Republican party, which were represented by the incumbents slated for defeat, were mere shadows as compared with the "city hall" forces. To block the triumphant march of the "city hall" hosts seemed a hopeless enterprise and was so termed by political prophets. Such was the situation confronting the Bar Association at the time when it decided to take part in the forthcoming judicial campaign.

Following the September, 1920, primary election for the Municipal Court, the Bar Association's Board of Managers, under the leadership of John R. Montgomery, its president, voted to create a permanent Committee on Candidates. The past presidents of the Association were appointed as the members of that committee. The object of creating a permanent committee was not only to have it report upon the qualifications of candidates as its predecessors had done, but also "to take such action as may be approved by the Board of Managers to secure the nomination and election of candidates possessing the highest qualities for judicial office."¹ This resolution opened the way for an enlargement of the customary scope of action and for a type of effort that would be limited only by the capacity, courage, and inclination of the Association's officers and directors.

¹Resolution of November 4, 1920 (*Chicago Bar Association Record*, November, 1920, p. 2).

The committee thus appointed began early to negotiate with the factional organizations in both parties. While still engaged in this activity, the committee suddenly woke up late in March to the threat of "city hall" domination already described. Instead of awaiting the development of events, the committee took the unprecedented step of openly entering the political arena. The various stages that led up to this course of action have been told in detail by the chairman, Amos C. Miller, as follows:

The committee promptly called a meeting of the Democratic organization and the various factions of the Republican party, with a view of seeing if some agreement could not be reached which would result in saving the best part of the existing bench, and save the bench as a whole from being degraded to the position of a useful adjunct of a political combination. Everybody responded except the city hall; that fact confirmed in our minds the rumor that the city hall proposed to take possession of the entire bench for its own purposes. The committee then strongly urged this plan: that a full ticket be selected at a primary to be conducted by the Chicago Bar Association, at which all lawyers of Cook County should have a vote, and that the ticket so chosen should be supported and nominated by the Republican factions other than the city hall and by the Democratic convention. It was believed that such a primary would result in re-naming all but a very few of the sitting judges, and would produce the strongest possible ticket. The plan met with the hearty approval of nearly all of the political leaders who participated in the conferences, but they were not unanimous and it was therefore discarded as not feasible.

The committee then urged the Democratic managers to place on the ballot under the Democratic column all of the sitting judges, whether Republicans or Democrats, who were willing to run on that ticket. We knew that the two members of the Bench who owed allegiance to the city hall would not accept such a nomination; we believed that all the others would be satisfactory to the great majority of the Bar. To this plan the Democratic managers assented, and the factions of the Republican party other than the city hall faction agreed to give such a ticket their whole support.

One of the Republican sitting judges declined to run on that ticket. And the city hall faction, foreseeing some slight danger in a coalition ticket, induced three satisfactory members of the Bench to accept nominations upon its ticket. This placed upon the city hall ticket five sitting judges and fifteen new men—ample for their purposes. The Democratic managers placed upon their ticket the five sitting Democratic judges, the nine remaining Republican judges, a Republican judge of the Municipal court and five new Democratic nominees, one of whom was a sitting judge of the Municipal court.

The ticket thus named was fairly satisfactory to the Bar Association committee, who believed that the ticket as a whole merited the support of the Bar, and that those men if elected would not submit either in making appointments or in the discharge of their judicial duties to the dictates of any ring or of any official power; and that those considerations were more weighty at that moment than the retention in office of two or three satisfactory judges who chose to cast their lot with the raiders, but who could in no way thwart their plans, whatever they might be.²

²*Journal of the American Judicature Society*, V, No. 2 (August, 1921), 47.

The committee recommended, further, that the Association as a whole decide the policy to be followed. The official statements of the propositions voted upon were:³

Proposition Number 1.—Shall the Chicago Bar Association give its support to one or the other of the two Circuit Court judicial tickets as a whole?

OR

Shall the Association hold a primary to determine the relative fitness of all candidates individually?

Proposition Number 2.—If a majority of the votes cast on Proposition Number 1 is in favor of supporting one of the two tickets as a whole, which ticket shall the Association support?

The result of this ballot, announced May 13, was 1,213 votes in favor of supporting one ticket and 846 against. The vote for the coalition ticket was 1,545 as against 177 votes for the "city hall" slate. Another Bar primary, conducted by the Lawyers' Association, also indorsed the coalition nominees.⁴

The campaign commenced April 28, after the coalition nominations had been completed. Although the Bar Association's committee and officers had pledged its support, the sanction of the membership was not given until the result of the referendum was announced two weeks later. From the standpoint of the Association, therefore, the campaign began May 13.

The situation was advantageous in that the candidates indorsed by the Association were on a single ticket and the issue of keeping the courts out of politics was clear-cut.

All of the forces of the community interested in an independent Bench supported the coalition ticket. The great majority of the Bar itself, as represented by the Association and the Lawyers' Association, supported this ticket. The newly enfranchised women's vote, as represented by the Chicago Woman's Club and the Woman's City Club, supported it. Nonpartisan organizations, including certain church groups, supported the "no-party" ticket. The Association itself raised and spent a special fund of \$61,000. Although insignificant as compared with amounts expended by the regular party organizations, this fund marked a high point for nonpartisan financing in Chicago and was an indication of the unusual efforts put forth by the Bar Association.

It is a fact, of course, that the coalition ticket had the support of three organized political groups—the regular Democrats, who were unified and were seeking to stage a "come back"; and the Deneen Republicans and the Brundage Republicans, who were trying to save the necks of the sitting judges affiliated with their respective factions.

³*Chicago Tribune*, May 8, 1921.

⁴*Chicago Legal News*, LIII (May 26, 1921), 349. The voting-range for coalition candidates was: high, 2,519; low, 1,612; for Republicans (city hall): high, 1,209; low, 438.

The election of June 6, however, brought an outpouring of voters never before witnessed in a local judicial election. Frequently the separate judicial elections poll as low as 18, 20, or 30 per cent of the registered vote.⁵ In 1921, however, 60 per cent of the electorate voted. Therein lies the explanation of the coalition victory and the real measure of the Bar Association's success. The spirited campaign brought to the polls the large group of independent voters who are attracted only by the excitement of a contest or by a sense of obligation when a moral issue is successfully injected into a contest. Nonpartisan groups always attempt to attract this element of the electorate. Usually, however, their efforts are too feeble to attract this section of the electorate in sufficient numbers to win.

The co-operation of the press was an important factor. Two daily papers in particular—the *Tribune* and the *Daily News*—took up the cause and gave it special editorial treatment. While their purposes were anti-“city hall,” as well as pro-coalition and pro-Bar Association, these two journals gave preferred positions and extended space to campaign news.⁶ In the mine run of Chicago's judicial elections, the news of the campaign is usually in competition with the spectacular news of the hour. Thus, at a time when the press was practically the only general means of reaching the voters (except the mail and platform), this concentration of attention upon a single issue undeniably was a potent factor in arousing the independent element of the electorate to vote for the coalition ticket.

In terms of votes polled, the three slates of candidates fared as shown in Table XI.

TABLE XI
ANALYSIS OF VOTES CAST FOR PARTY TICKETS
IN THE JUDICIAL ELECTION OF 1921

Ticket	Number of Votes Polled		
	Low Man	High Man	Average for Ticket
Democratic Coalition (Indorsed by the Bar).....	311,582	349,249	330,000
Republican-“City Hall”.....	219,274	248,967	239,000
Socialist.....	16,610	18,363	17,500

In terms of wards won, the coalition victory was even more impressive, for it elected its entire ticket in twenty-five of the city's thirty-five wards and in most of the “country towns.”⁷

⁵See chap. xx, p. 212, for table of voting participation in judicial elections.

⁶See chap. xxi, p. 231, for details of the *Tribune's* editorial crusade.

⁷See chap. xix, p. 203, for analysis of this vote.

While the Bar Association fought for a great principle in this contest, the underlying question was raised by Mr. Miller in his analysis of the result.

It was only when the city hall ran up the black flag that we had any chance of so arousing the voters as to get out fifty per cent of the vote. And with a less total vote than that, the city hall would have cornered the day. There was a great principle involved in this election, and the people can be aroused in support of a vital principle. But how often does that situation arise in a judicial election?*

The same situation was to arise again six and twelve years later, as we shall relate, but under different circumstances and with vastly different results.

**Journal of the American Judicature Society*, V, No. 2, 47.

CHAPTER XI

THE BAR ASSOCIATION ENTERS THE POLITICAL ARENA

THE JUNE JUDICIAL ELECTIONS OF 1927 AND 1928

In the Circuit Court election of June 6, 1927, and the Superior Court contest of June 4, 1928, the Chicago Bar Association took the rôle of organization sponsor and political party. These two elections are of especial interest because they supply the only illustrations of direct political action by the Bar in Chicago. Earlier instances of comparable activity, it will be recalled, were conducted through the medium of another agency such as a citizens' committee or through one of the existing political parties.

THE BAR FIGHTS COALITION IN 1927

"In the election of June 6, 1927, the political bosses obtained the control of the Circuit Bench which they sought but failed to accomplish in 1921."

This statement, from one who knows whereof he speaks, describes the ultimate result of that contest upon the Circuit Bench. How this control was obtained and the futile efforts of the Bar Association to prevent it is an illuminating story.

For several weeks in advance of the judicial nominating conventions,¹ which were scheduled for April 8, the Association's Committee on Candidates had been active in interviewing the leaders of the various parties and factions. It sought to effect a coalition agreement that would assure the re-election of all incumbents of the Circuit Bench and thus forestall a "raid," such as had been attempted in 1921. On the eve of the conventions the Association's committee had received what it considered satisfactory assurances of co-operation from the Democrats and from two Republican factional leaders. George E. Brennan, the Democratic leader, for example, was reported to have said:

I have told the Bar Association that the Democratic organization will co-operate with them in every way to bring about coalition for the re-election of sitting judges and we are willing to have the association pass on all our candidates. The Democratic party stands now where it stood in 1921. It again puts good citizenship above partisanship and prefers to have justice administered by lawyers, not by precinct committeemen. If the Republican leaders take a different position we shall be glad to offer our party column for a coalition ticket for we are confident that many thousands of Republicans and independents who supported coalition six years ago will do so again this year regardless of those leaders.²

¹Under an act approved June 27, 1921, nominations for judges of the Circuit and Superior courts are made by party conventions.

²*Chicago Tribune*, April 3, 1927.

On the same day, Homer K. Galpin, County Chairman of the Republican party and State's Attorney Robert E. Crowe, a leader of the faction then in control of the official Republican party machinery, issued the following joint statement:

Some weeks back Robert E. Crowe and myself visited George E. Brennan as the representative of the Democratic party and stated to him that we were in favor of the principle of coalition in judicial elections and that we believed the judges, irrespective of party affiliations, who had made good records should be retained on the bench. Brennan said he agreed with the principle also.

Robert E. Crowe later stated to the board of managers of the Chicago Bar Association our position in this matter, to which they agreed. . . . Neither of us have changed our opinion in reference to this matter.³

Edward J. Brundage, leader of the Republican faction bearing his name, is reported to have said:

I shall gladly support such an action, provided that there are no candidates placed on the ticket who would not have a chance to be elected in the ordinary form of contest. In other words, I am opposed to taking advantage of a coalition movement to place unfit candidates on the bench. If coalition is effected, the nominees should include only such new aspirants for the bench as are approved by the Chicago Bar Association.⁴

In the light of subsequent events, however, these statements were meaningless. Mr. Brundage was "out in the cold" politically. The Crowe-Thompson Republicans and Brennan-Cermak Democrats evidently had already worked out a bipartisan agreement involving not only the control of the County Board, Sanitary District, and other offices then in their control, but covering also the mayoralty contest of 1927 (in which Thompson won over Dever) and the June judicial election. The agreement was to involve the distribution of patronage through the Circuit Court by means of the two Crowe-Republican judges voting with the Democratic minority. It is noteworthy that the Deneen forces, which sought to re-elect their judges on the Circuit Bench, issued no pre-convention statements.

With twenty places on the Circuit Bench and one place on the Superior Court to be filled, there were nineteen incumbents—twelve Republicans and seven Democrats—who desired renomination. Circuit Judge George Kersten, Democrat, was not a candidate for re-election, and the Superior Court position was vacated by the death of Judge Timothy D. Hurley, Democrat. Had the normal rules of coalition been applied, the twelve Republican and seven Democratic incumbents of the Circuit Bench would have been renominated and the Democrats would have filled the two vacancies.

³*Ibid.*

⁴*Ibid.* Mr. Brundage appears to have invoked the approval of the Bar Association at this time because he had nothing to lose politically by so doing. A few months before two of his adherents on the County Board were deposed from important committee posts under a bipartisan realignment between the Crowe-Thompson Republicans and the Brennan-Cermak Democrats. See *ibid.*, January 11, 1927.

New leadership had developed in both the Democratic and Republican ranks, however, and the new bosses were maneuvering for representation on the slates.

Among the Democrats a contest developed between the elements led by Anton J. Cermak and Michael L. Igoe.⁵ Cermak demanded the right to fill the two normal vacancies and forced the choice of Frank D. Comerford, one of the party's oratorical aces, for the Superior Court vacancy, and Otto Kerner, attorney for the County Board (of which Cermak was president), for the Kersten seat. Cermak was in a position to carry out his demands in the convention. Igoe, likewise, had elements of strength. The opposing forces came to grips in the caucus and continued to argue behind closed doors while the two party conventions waited to make the nominations. When hopes of a compromise vanished, it was decided to create a new vacancy "by giving the ax" to one of the incumbents.⁶

On the Republican side, the Crowe-Thompson forces (lineal descendants of the "City Hall" faction of 1921) controlled the convention. There were many advance reports that the faction intended to nominate one or more of its adherents to the Circuit Bench. The hint in Mr. Brundage's statement of April 3, already quoted, of a plan "to place unfit candidates on the Bench" became meaningful in the light of subsequent events. For, in the convention, the Crowe-Thompson group "shelved" two of the Republican incumbents to make room for two Crowe adherents.

When the conventions assembled on April 8, the date set for their meeting, they were adjourned until May 4, presumably to permit the political forces to recuperate from the mayoralty contest (April 5) and to complete the negotiations for the coalition ticket. The interval was filled with reports in the press as to the intentions of the party leaders and of efforts by the Bar Association to steer the course of nominations. On April 15, for example, the Bar Association, through a committee headed by Major Edgar B. Tolman, was reported as having "waited on" both Mr. Crowe and Mr. Brennan with the special request that they adhere to the policy of renominating the "honest and efficient sitting judges." The Association also publicly repudiated the report that it was opposed to the re-

⁵Later these two factional chiefs contested for the mantle of Democratic leader George E. Brennan (who died August 8, 1928), with Cermak gaining the throne. The Cermak régime then opposed Igoe at every turn, even to the extent of stripping him of his ward committeemanship in 1932 when he sought the nomination for governor against Henry Horner, the Cermak candidate. After Cermak's death, March 6, 1933, a compromise was effected with the Nash-Kelly Democracy in 1934 whereby Igoe received the Democratic nomination and election for Congressman at large, a post far afield from the operations of the Cook County Democracy. In 1935, with the backing of Senator James H. Lewis, Mr. Igoe was appointed United States Attorney for the Northern Illinois District.

⁶*Chicago Daily News*, May 10, 1927.

election of Judge Oscar Torrison, one of the Republican sacrificial lambs.⁷

Four days later came the reassuring word, "Bar Told Raid on Bench Called off."⁸ Mr. Crowe was quoted as having said that he would not do anything that would cause the Democrats and the Bar Association to unite behind a coalition ticket of their own. Mr. Brennan was said to be of a mind to keep his promise to renominate all of the incumbents except Judge George Kersten.

Another important factor in the nominations came to light April 27 in the report that the incumbents affiliated with the Deneen faction were to be renominated by the Crowe-Thompson Republicans under a "harmony" pledge made during the mayoralty campaign.⁹ At this time the Bar Association was still receiving assurances from both the Republican and Democratic leaders that there would be no attempted raid on the Circuit Bench.

Three days before the conventions met, the situation had changed. The political leaders became resentful over questions as to who would be nominated for the vacancies. Prospective candidates to whom places had been promised became "touchily skeptical." Some of the incumbents began to fret over the situation, and the Association's leaders showed signs of worry. The rôle of the Bar Association in the proceedings was thus described by Parke Brown, political writer:

As a peacemaker the Chicago Bar Association committee on candidates hasn't found the doors as wide open as usual. It has been unable to obtain what might be considered satisfactory assurances that all the sitting judges of whose record it approves will be renominated, and it hasn't any promise that its opinion will be sought concerning new candidates to be slated. . . . Several of those whose names have appeared are beginning to feel that neither the approval of the Chicago Bar Association nor any other influence than that of practical politics is going to cast the decisions when the conventions assemble.¹⁰

Practical politics was to be the ruling factor, indeed. Despite their earlier assurances, the leaders of both parties, in the final stages, not only completely ignored the Bar Association, but also planned to make any effective opposition practically impossible.

In the first place, the conventions were held and the coalition nominations were completed only three days before the legal deadline for filing candidacies. While independent candidates could place their names on the ballot by petition, there remained only three days in which to obtain the many thousands of names necessary for the purpose.

In the second place, the nominations were dictated largely by political considerations. Each of the sixteen incumbents who were

⁷*Ibid.*, April 15, 1927.

⁸*Ibid.*, April 19, 1927.

⁹*Ibid.*, April 27, 1927.

¹⁰*Chicago Tribune*, May 1, 1927.

renominated, in addition to their individual prestige, had personal political ties that were more instrumental than any nonpartisan support in securing their renomination.

From the Bar Association's viewpoint, the crucial issue of the situation appeared in the fact that three worthy incumbents had been dropped in order to make places for candidates who were (and were so to prove) more acceptable to the political powers. It was on this basis that the Bar Association entered the contest and actively supported the independent candidacies of the rejected incumbents.

The course pursued by the Association was: (1) unofficially to assist the three deposed incumbents (Judges Frank Johnston, Jr. (Democrat) and Charles M. Thomson and Oscar M. Torrison (Republicans), to qualify as independents and obtain in three days' time 46,283 signatures to their independent petitions; (2) to hold a Bar primary on all of the candidates, and (3) on the basis of this expression of opinion, which showed the three rejected incumbents to be favored over the new nominees by a vote of two and one-half to one, to center its campaign on obtaining the re-election of the three rejected incumbents.

The result of the Bar primary, announced May 19, ranked the three deposed incumbents running as independents thus: Thomson, seventh; Johnston, ninth; and Torrison, fifteenth; whereas it placed the three coalition nominees, whose places they took—Kerner, twenty-second, Feinberg, twenty-fifth, and Klarkowski, last—in the list of thirty candidates.

The Bar Association opened its campaign on May 20. A campaign committee was formed with Amos C. Miller as chairman and Silas H. Strawn in charge of finances. It was planned to enlist the co-operation of civic organizations to "keep the judiciary out of politics." The Association's campaign consisted of (1) meetings on behalf of the three candidates; (2) communications to voters; (3) advertisements in the daily and foreign-language press; and (4) statements in the press.¹¹

"The following statement, issued June 2, is an example of its appeal:

KEEP THE COURTS OUT OF POLITICS

Twenty judges of the Circuit Court and one judge of the Superior Court are to be elected Monday, June 8th.

The candidates whose names appear on the enclosed sample ballot were recommended to the voters at a primary of The Chicago Bar Association which is composed of more than 4200 lawyers.

The Chicago Bar Association is particularly interested in keeping the courts out of politics. It is, therefore, deeply interested in the candidacies of Judges CHARLES M. THOMSON, FRANK JOHNSTON, JR., and OSCAR M. TORRISON. These three judges alone, of all the twenty sitting Circuit Judges, were left off the ticket by the party managers; they have been nominated by petition and their names will appear on the ballot in a separate column. They were ousted from the ticket by the party managers not because of any blemish on their judicial records, but solely because of political considerations.

The three independents conducted a newspaper campaign which consisted largely of explanations of how politics had forced them off the ticket.¹² In the meantime the coalition forces conducted practically no campaign. They evidently were content to rely upon the "organization vote" and upon the public inertia usually manifest in the separate judicial elections.¹³

The campaign conducted by the Bar Association and the other forces behind the three independents succeeded in rallying an average of 97,000 votes for them. Relatively this vote was gratifying, for it was the first time a group of candidates indorsed by the Bar Association had tested the strength of that support unmixed with support from a major political party or faction. But as compared with the vote for the coalition ticket, which averaged 209,700 votes, their totals fell far short of the required number.

The Association's campaign was desultory as compared with the one of six years before. In 1927, the Association disbursed approximately \$12,500 for campaign purposes, whereas nearly \$61,000 was expended in the previous election.¹⁴ In 1927, only 25.6 per cent of the voters went to the polls, whereas six years before 60.1 per cent had voted. The campaign received only such press notices as the heat of the contest engendered, and the tactics of the independents were too genteel to excite much popular interest. The writer well recalls attending an evening "rally" for the independents, held June 2 in Harper Library on the University of Chicago campus.

At the last moment and without notice to The Chicago Bar Association these nominations were made notwithstanding assurances to The Chicago Bar Association that sitting judges with good records would not be left off the coalition ticket. The records of these three judges were overwhelmingly approved by the vote at the Bar Primary of May 13-18, 1927.

Because of the excellence of their records, Judges CHARLES M. THOMSON and FRANK JOHNSTON, JR. were chosen by the Supreme Court to sit in the Appellate Court. They have served for years with distinction in that high office and have brought honor to the Appellate Bench. Judges of the Illinois Supreme Court have publicly commended the records these Judges have made in the Appellate Court. Judge OSCAR M. TORRISON, not assigned to the Appellate Court has been a Judge for 21 years; he is a man of highest integrity who has been faithful in the discharge of his judicial duties.

The attempt of the party managers to defeat such faithful public officials without just cause is a blow at the proper and independent administration of justice which should be resented by every right thinking man and woman in Cook County. In the interest of the public service and the proper conduct of the courts, we urge you to vote on June 6th for the three sitting judges, Thomson, Torrison and Johnston, in the "Independent Judicial Party" column and for the candidates marked thus x in the Republican column as indicated on the enclosed sample ballots. All of these candidates received the approval of The Chicago Bar Association at its bar primary.

Please distribute to other voters the extra ballots enclosed.

Respectfully submitted,

WILLIAM C. BOYDEN, *President*
HERBERT M. LAUTMANN, *Secretary*

AMOS C. MILLER, *Chairman*
Judicial Campaign Committee

¹²See *Chicago Daily News*, May 10, 12, 19, 20, 24, 31, June 1, and *Chicago Tribune*, June 2, 1927.

¹³*Chicago Daily News*, June 4, 1927.

¹⁴*Chicago Bar Association Record*, May, 1922, and X, 310.

The audience consisted of less than twenty-five persons, including the candidates and their entourage.

"Chicago's quietest judicial campaign ends," read the caption of a *Daily News* editorial printed two days before the election. It continued:

There was little excitement except in the offices of the election board where a crush of precinct and ward election officials on hand to receive supplies and instructions developed early. . . . There has been little noise making. . . . The Chicago Bar Association has used the mails rather than the public platforms to arouse the voters. . . . The candidates on the coalition ticket backed by the politicians have made little or no campaign. They are relying on the organization stalwarts . . . to go to the polls and the independent voters to remain at home.¹³

Thus as sponsor of an independent political movement, the Association was unsuccessful. It had been deliberately rebuffed by the party leaders in its rôle as unofficial adviser and arbiter, after having been led to believe that its co-operation was both desired and welcome. However, the comparatively large vote polled by the three independent candidates encouraged the Association to pursue a more active program in the elections during the year to come.

THE SUPERIOR COURT ELECTION OF JUNE 4, 1928

The only judicial election in which the Bar Association is known to have adopted the rôle of outright partisan occurred June 4, 1928. Never before had it undertaken to become a political party in the sense required by the election laws. The sequence of events leading up to this election and the outcome of the contest are therefore noteworthy as showing the difficulties surrounding the rôle of independent or third-party sponsor.

The fact that the nominating primary for the Municipal Court election occurred in April and the regular election of the Superior Court in June, gave the Association an opportunity to try a plan suggested by its Committee on Candidates for "more active and more effective" participation in judicial selection.¹⁴

¹³June 4, 1927.

¹⁴"The time has now come when the Bar should participate more actively and more effectively not only in the election of judges, but also in the nomination of candidates for election. For the purpose of obtaining this result, the Committee has suggested a series of Bar Association primaries at which opportunity will be given to the membership:

"First, to endorse those sitting judges whose character, ability and record on the bench warranted their retention in that position;

"Second, to present candidates on nominating petitions to be recommended for the judicial positions of those of the present incumbents who failed to receive such endorsement;

"Third, a bar primary at which the membership would have the opportunity to express its choice from a list consisting of all of the incumbents and those who had been thus nominated by petition.

"This plan involves a step farther than the Association has ever gone, but it is believed to be worth trying" (Communication to Chicago Bar Association members, November 21, 1927).

Briefly stated, the Association proposed to sift out those incumbents whom it desired to support for re-election and then to bring out candidates of its own choosing for all positions which were either filled by unfit incumbents or in which there were normal vacancies. The Association hoped to interest the party leaders in its suggestions. But failing that, the logical course remained for the Association to support its nominees by appropriate political action at the polls.

Since our chief interest relates to the Superior Court election, the Association's activity in anticipation of that contest will be traced. In the Bar primary¹⁷ held to indorse, or to withhold approval from, the six incumbents, all of whom sought re-election, only one judge (Walter P. Steffen) received the number of votes required under the rule for indorsement (a favorable vote of a majority of the total resident membership of the Association).¹⁸

With such a poor showing of judicial caliber among incumbents seeking re-election, the Association, by a nine-to-one vote, took the next step of inviting new nominations. By January 20, 1928, twenty-eight names, including those of the incumbents whom it had previously failed to indorse, had been proposed. A second preferential primary resulted in the indorsement of two more incumbents (Martin M. Gridley and Joseph Sabath). It also proposed three new names (Howard W. Hayes, Daniel P. Trude, and Charles Center Case) for the remaining three places filled by the incumbents (Jesse Holdom, John J. Sullivan, and Worth E. Caylor) who had failed of indorsement in the first poll.¹⁹

When bipartisan coalition became certain for this Superior Court contest, the Bar Association took the final step in its plan. On May 3 the Association announced its intention of filing a non-

¹⁷Results of Bar primary to indorse incumbents of the Superior Court seeking re-election June 4, 1928; 1,853 votes required for indorsement (data from *Chicago Tribune*, December 30, 1927).

Incumbent	Party	Yes	No	No Opinion
Worth E. Caylor.....	R	1212	402	679
Martin M. Gridley.....	D	1794	85	418
Jesse Holdom.....	R	1419	639	216
Joseph Sabath.....	D	1834	292	189
Walter P. Steffen.....	R	1951	155	216
John J. Sullivan.....	D	1589	314	404

¹⁸In the corresponding poll for the Municipal Court, only one of the twelve incumbents (Howard W. Hayes) was approved.

¹⁹In the case of the Municipal Court seven incumbents—three Republicans and four Democrats—were approved for renomination. A third primary was necessary, however, after the formal entries for the primaries had been closed.

partisan ticket, under its own name, for the June 4 election.²⁰ Its nominees were the candidates indorsed in its successive primaries held several months before.

The coalition forces renominated the six incumbents—three Democrats and three Republicans—for the regular positions, and Robert E. Gentzel, Republican, for a vacancy in the same court. Since the Bar Association had also nominated for its own ticket three of the six incumbents, these doubly honored justices found themselves between the devil and the sea. Under existing law they were obliged to choose which nomination to accept, since a candidate's name can appear in only one column on the ballot. They quickly decided which side their bread was buttered on and chose to be candidates on the Republican-Democratic coalition ticket, which appeared in the Republican column on the ballot. The Association, however, did not retaliate, but gave them the benefit of its indorsement in all its literature and advertising.

The Association girded itself for an active campaign. It engaged one hundred billboards to carry the legend:

“Shall the Political Bosses Appoint or the
People Elect Your Judges?”

So limited was the choice, nevertheless, that the vote resulted in the indorsement of only ten Republicans and eleven Democrats. There were twelve places on each ticket. The Association also balloted on the candidates for the state's attorneyship with the result that John A. Swanson won the Republican indorsement over Robert E. Crowe by 2,191 to 463, and William J. Lindsay won over D. F. Murphy by 1,837 to 132. The result of the April primary was such that the Bar recommendations did not seem to have much effect. Four Republican aspirants indorsed by the Bar Association were not nominated. Nine Republican candidates who were not approved by the Bar Association were nominated. Only two candidates indorsed by the Bar failed of nomination on the Democratic ticket, while nine of their approved candidates ranked among the first twelve.

²⁰“For many years the Chicago Bar Association has taken its stand for a nonpartisan judiciary. Whenever candidates have been nominated for judicial office by the respective political parties the Bar Association has by a vote of its members recommended the best qualified of the nominees without regard to their political affiliations. . . .

“It now appears that the Crowe-Thompson-Galpin faction of the Republican party, being still in control of the county convention which nominates candidates for judges, entered into a deal with the Democrats and succeeded in forcing upon the voters a *single* ticket of candidates for Superior Court judgeships.

“We were powerless to prevent the nomination of such a bi-partisan ticket, but it is the view of an overwhelming number of lawyers that an opportunity should be given voters to choose their own judges instead of permitting political bosses to appoint them.

“The Chicago Bar Association stands for the election to the Bench of judges and lawyers who have demonstrated their fitness, who are industrious and fearless and who will perform their duties as judges independent of political influences. It is our hope that the sitting judges who have been approved by the membership will elect to stand for the principle of an independent, non-partisan judiciary” (statement of the Chicago Bar Association, *Chicago Daily News*, May 4, 1928).

An extensive advertising campaign was also conducted in the daily and foreign-language press. The co-operation of civic organizations was enlisted and the ministers of a thousand churches were asked to urge their members to vote for the Bar slate. In a signed statement the directors of the Citizens' Association urged those "who would like to strike another effective blow at the existing alliance between crime and crooked politics" to support the Bar ticket.

The campaign became an exchange of quips between Democratic leader George Brennan and John R. Montgomery, chairman of the Association's campaign committee. Mr. Brennan opened the debate on May 23 with the following statement, which is a gem of political sophistry:

For a week or more one of the Bar Association judicial candidates has been calling up our Democratic committeemen and asking them to get votes for him and they won't lose anything by it. What does that mean?

Talking about the rape of the law and that sort of thing—in all my life I have never asked a judge even to get a man off jury service. Can any member of the board of governors of the Bar Association say the same? They want judges who will rule with them and give them the best of it—it brings in the clients.

I understand the association plans to have bill boards claiming this is a contest between the people and the bosses. I'm not a boss. I've been considered the head of the organization because everything to be successful must have a responsible head.

We as citizens have two cherished thoughts. One is our judiciary shall be above partisan politics. The other is that if a judge administers the law rightly, fearlessly and honestly, he should be returned to office.

Eight years ago, the Republican machine, drunk with power, decided because the judges were not at their beck and call, they'd throw them off the bench. They threw ten off their ticket. I advocated coalition to protect the bench and the people. The sitting judges on a coalition ticket were re-elected by upwards of 100,000, although a year before Cook County had gone Republican by 400,000. A year ago we had coalition. The Republican organization did not renominate two judges. We had nothing to do with that. The Bar Association made a campaign on the issue that the sitting judges should be re-elected. Now it sees fit to reverse itself. The Bar Association—that is the sixteen men on the governing body—would like to name the judges themselves.²¹

Mr. Brennan conveniently disregarded the following points: (1) That reports credit him with addressing numerous requests, if not instructions, to the judges; (2) that the Republicans who "threw ten off their ticket" in 1921 were the same faction with which his cohorts had now coalesced; (3) that the Democrats in 1927 had not renominated Judge Johnston, a sitting judge; and (4) that successive votes of the Association (not only its governing body) had unmistakably showed disapproval of the work of the three incumbents to whom the Association had denied support.

²¹*Chicago Tribune*, May 23, 1928.

Again, as in 1927, the coalition nominees made practically no campaign, and yet, despite the Association's efforts to arouse public interest in an unbossed Bench,²² a total of 311,839 voters, or only 22.7 per cent of the registered electorate, went to the polls. The coalition candidate polled an average of 211,200 votes, as against the average of 96,700 votes for the three men on the Bar Association ticket. This number was substantially the same as the three Bar-supported independents polled in 1927.

The Bar's defeat was attributed by Mr. Montgomery to lack of time and organization to get out the vote. He termed the contest "just one of a long series of fights on the proposition that the Bar Association is better qualified to determine who ought to be judges in this city and county than any group of politicians. It is a fight for the independence of the bench."²³

Thus, in two separate contests the Association had been defeated by substantially the same margin. Nevertheless, so large a bloc of votes as its candidates had polled in these two struggles would have constituted a balance of power and in a closely contested, straight partisan fight would have been a decisive factor.

But against the combined forces of the political professionals, the Association was playing a game in which the cards were stacked against it from the beginning.

²²The treasurer's reports to the Association for 1928 and 1929 (its fiscal year ends May 31) show a total of \$22,939 contributed for the May-June judicial campaign and \$2,324.90 for campaign purposes in 1928-29. The fund had a deficit of \$4,852.02 on May 31, 1929 (*Bar Association Record*, XII, No. 8, 435).

²³Statement at annual meeting June 14, 1928.

CHAPTER XII

THE BAR PLAYS A LONE HAND

THE CIRCUIT COURT ELECTION OF JUNE 5, 1933

The Circuit Court election of June 5, 1933, furnishes a striking climax to a long series of contests in which the Chicago Bar Association has participated. Without doubt the Association's efforts to elect its indorsees reached a peak in this campaign, not in the amount of money expended, but in the zeal of the drive, the widespread scope of its contacts, and the large amount of co-operation it received from nonpartisan groups. In addition, it had a popular "issue" usually so necessary to a successful campaign.

Yet in terms of tangible achievement the Association probably never accomplished so little. This circumstance throws into bold perspective the conditions of practical politics which confronted the Association, and furnishes striking evidence of the handicaps which beset an amateur agency which ventures singlehanded to cross swords with the political mercenaries.

For several months the public press had been filled with reports of political interference in judicial administration and of alleged racketeering in receiverships involving hundreds of millions of dollars' worth of properties in foreclosure. These matters had long been subjects of private allegations and, as the election approached, were on the verge of blossoming into a public scandal. As in 1921, the times appeared propitious for creating an "issue" which the Association could use compellingly to convince the voters as to the importance of its recommendations.

More than four months before the nominating conventions of the political parties were scheduled to be held, the Association initiated its strategy to forestall, if possible, the re-election of any incumbents whose records it might disapprove. The first steps taken were to obtain the consensus of the Association (1) concerning the incumbents' records in office (poll held January 22),¹ and then (2) on the direct inquiry: "Should Judge be renominated?" The latter plebiscite (concluded February 12) repeated the form of Bar primary first applied in 1928.

¹Approximately 1,600 lawyers answered the following inquiries (the form first employed in 1928) concerning each of the nineteen judges seeking re-election.

1. Does he open court promptly?
2. Is he diligent in the dispatch of business?
3. Is he patient and courteous?
4. Is he attentive and fairminded?
5. Does he possess legal ability?
6. Do you have confidence in his integrity?
7. Do you regard him as an able judge?

The answers were scored on the following basis: 10 points for question number 3, and 30 points each for questions number 5, 6, and 7.

These two plebiscites, which are summarized in Table XII, thus gave a clear-cut idea of which judges the Association favored for re-election and those it disapproved.

TABLE XII
THE BAR ASSOCIATION'S FITNESS RATING OF INCUMBENTS
SEEKING RE-ELECTION IN 1933*

Judge	Political Affiliation	Percentage Rating of January 22†		Percentage Vote of February 12 for Renomination‡
		Fitness	Renomination	
<i>Approved:</i>				
F. S. Wilson.....	D	98	97	97.4
H. M. Friend.....	R	96	94	95.7
D. F. Matchett.....	R	96	93	95.2
Thos. Taylor, Jr.§.....	R	96	91	....
Kickham Scanlan.....	R	94	92	92.5
Joseph Burke.....	D	91	89	92.1
W. V. Brothers.....	R	91	87	88.3
D. P. Trude.....	R	90	87	89.3
John Prystalski¶.....	D	88	85	88.6
Philip L. Sullivan.....	D	87	85	89.8
Thomas J. Lynch.....	D	83	80	75.1
Philip J. Finnegan.....	D	82	78	72.9
Frank H. Bicek.....	D	..	..	72.6
(Apptd. 1-26-33)				
Dennis J. Normoyle...	D	82	76	58.8
<i>Disapproved:</i>				
George Fred Rush.....	R	69	60	39.2
Michael Feinberg.....	R	55	37	23.2
D. M. Brothers.....	R	54	39	20.4
H. M. Fisher.....	D	49	28	19.7
J. R. Caverly.....	D	48	35	21.8
S. H. Klarkowski.....	R	30	24	14.3

*Sources: *Chicago Tribune* and *Chicago Daily News*, February 6, 1933.

†The rating of January 22 was obtained in the questionnaire inquiry concerning the incumbents' qualifications.

‡The rating of February 12 was the result of a vote on the question "Should he be renominated?" and the rating is a percentage of the number of votes recorded in the affirmative out of the total number polled.

§Judge Taylor was not a candidate for re-election.

¶Judge Prystalski had served in the Superior Court. In this election he was a candidate for re-election, but switched to the Circuit Court.

As the second phase of its program, the Association undertook to prevent the renomination of the six judges whom it had thus disapproved: George Fred Rush, Deneen Republican; Michael Feinberg and Stanley Klarkowski, Crowe Republicans; D. M. Brothers, Republican; and Harry Fisher and John R. Caverly, Democrats. Its plan was to prevent the renomination of these six men on an "airtight," bipartisan coalition ticket. In case this plan failed, the Association intended to sponsor the nomination of an independent ticket. Its purpose was to see that a full quota

of candidates was put into the field, from which the electorate could choose a Bench that measured up to the Association's standards of fitness.

To avoid the difficulty of having too short a time in which to act, the Association, on March 24, took a third referendum on the proposition to empower its officers (1) either to favor the nomination of an independent ticket, as it had done in 1928, in case the disapproved candidates were included on a coalition ticket, or (2) to secure nominations of candidates for an independent ticket.

The plan of the Association was explained by Charles P. Megan, its president, in these words:

Back of the so-called coalition tickets since 1921 have been found political intrigue and political deals which have resulted in bringing to the bench several judges who in the opinion of the Bar lack qualifications for judicial service. . . . A strong effort is being put forth to bring about the renomination of all of the sitting judges . . . , including those whose records were vigorously disapproved by the members of the Association not only in the Bar Primary of February but in the questionnaire which was sent out in advance of the Bar Primary.

It is the duty of the party organizations to name for judicial office only those candidates who possess the highest qualifications. The press and good citizens in general are continually urging the Bar Association to take the leadership in securing the election of good judges. Repeatedly we have pursued a policy of watchful waiting, only to find that the party machinery has acted for the nomination of unfit candidates on almost the last possible day for the filing of nominations for the party conventions. With but five to eight days remaining thereafter for the nomination of independent candidates, the work of the Bar Association and those who support its recommendations has been rendered ineffective.²

By a vote of more than five to one the Association advocated a vigorous offensive by nominating an independent ticket.³ The Association's officers, if they chose to use the authority, were thus fully empowered to oppose a coalition ticket which contained the six disapproved incumbents.

From the newspaper headlines⁴ it is possible to trace the negotiations which resulted in the Democratic party nominating a coali-

²Communication of March 24, 1933.

³The votes were: 1. To support an independent ticket: Yes: 1,781; No: 258. 2. To empower the Association's officers to secure the nomination of independent candidates: Yes: 1,659; No: 359 (*Chicago Tribune*, March 31, 1933).

⁴Newspaper headlines tracing the judicial nominations in 1933:

March 17: "Politics Hum as Hot Campaigns for Judgeships Are Opened" (*News*).

March 22: "Limited Fusion in Prospect for Court Election; Democrats Talk of Backing Some Republicans" (*Tribune*).

March 25: "Judge Coalition before Meeting of Republicans" (*News*).

March 30: "Limited Fusion on Judges Gains Favor among Leaders" (*Tribune*).

March 31: "Fusion Ticket in Judicial Race Seen" (*American*).

April 4: "Coalition for Judges" (*Tribune*; editorial urged coalition "to protect the bench from the accidents of party fortune").

tion ticket of the Republican and Democratic incumbents—a situation which the Bar Association was most anxious to avoid—and the Republicans nominating a complete slate.

Prior to the party conventions, the Association “served notice” of the results of the Bar primary upon the leaders of the Democratic party and of the various Republican factions. The president of the Association and the chairman of the Committee on Candidates “met with Mr. P. A. Nash, Chairman of the Democratic Central Committee at the headquarters of the committee in the Morrison Hotel and they were received by Mr. Nash, Alderman Jacob M. Arvey, and Moe Rosenberg. The Association’s representatives delivered to the Democratic leaders a copy of the vote of the membership on the sitting judges and urged that attention be paid to the opinion of the Bar.”⁵

With one exception, the Democrats renominated⁶ all of the nine Republican and nine Democratic incumbents seeking re-election, including Justice DeYoung (Republican) of the Illinois Supreme Court.⁷ The exception was Judge David M. Brothers, who was one

April 6: “G.O.P. Proposes Bench Coalition; Asks 50-50 Basis on Slate” (*Tribune*).

April 8: “Coalition Plan for G.O.P. Judges Runs into Snags; Democrats May Deal with Candidates” (*Tribune*).

April 9: “G.O.P. Split on Judicial Ticket Coalition Plans” (*Tribune*).

April 10: “Coalition Plan Blows up Again” (*News*).

April 11: “Democratic Chief Inclined To Give G.O.P. 5 Bench Posts” (*Herald and Examiner*).

April 11: “G.O.P. Coalition Hopes Wane” (*Tribune*).

April 12: “Two Judicial Conventions Recess till Saturday” (*Tribune*).

April 14: “Party Leaders in Conference on Coalition; Seek To Agree on Judges Despite Objections by Bar Association” (*News*).

April 14: “Bar Asks Both Parties To Put up Full Bench Tickets” (*Tribune*).

April 16: “Full Judicial Tickets Named by Both Parties; Number of Candidates Must Choose Allegiance” (*Tribune*).

April 18: “Battle over Judges’ Tickets Growing Hotter” (*News*).

April 18: “Six Judges Named by Both Parties Join Democrats; DeYoung and Five Others Quit G.O.P. Slate” (*Tribune*).

April 20: “County Republicans Decide To Fill Judicial Ticket Vacancies” (*Tribune*).

April 25: “Fill Vacancies on Republican Ticket” (*Tribune*).

⁵ Statement of Charles P. Megan, president of the Association, May 3, 1933.

⁶ Enlightening are the remarks of Clarence N. Goodwin (as reported in the official proceedings) to the Conference of Bar Delegates, American Bar Association, at Grand Rapids, several weeks later: “We had a situation where the nominations were made in June in Chicago. Four people made those selections. One of them had been in jail and is likely to go there again. [Moe Rosenberg later died on the eve of his trial for federal income tax evasion]. I will say that at least two of them ought to be there. . . .”

⁷ One explanation of the Democrats “adopting” the Republican incumbents when they could have elected a ticket of their own party men is that the Republicans helped to expedite the passage of emergency legislation in the Illinois General Assembly to permit the Chicago City Council to choose a mayor as successor to the late Anton J. Cermak from outside its own ranks.

of the six incumbents disapproved by the Chicago Bar Association.⁸

The Republicans also renominated five of the eight Republican Circuit Court incumbents and Justice DeYoung. However, they refused to nominate Judges Feinberg and Klarkowski, Crowe Republicans, for the stated reason that these judges had deserted a nominal Republican majority of that court, and had joined with the Democratic minority members, in appointing a Democrat to the South Park Board to succeed a Republican commissioner who had resigned.⁹ The Republicans also refused to nominate Judge George Fred Rush, Deneen Republican, who had been disapproved by the Bar. But the Republicans had renominated Judge David M. Brothers, who had been omitted by the Democrats. The other Republican incumbent nominees on the Democratic ticket had been highly indorsed by the Bar Association.

When the five Republican incumbents and Justice DeYoung withdrew from the Republican ticket and ran on the Democratic slate, the Republicans filled up their slate with new names. The Republicans thus had a Circuit Court ticket of one incumbent and nineteen new candidates. The Association encouraged the Republicans to file a complete ticket in spite of the political fate which even an amateur prophet knew awaited such candidates. Regarding this ticket, Mr. Megan explained:

Fortified, however, with the authority granted by the Association . . . your committee felt in a position to assure the Republican County Central Committee that at least some of the candidates nominated by that party would receive the support of the Association if they remained in the field. With this assurance the ticket stood firm and the vacancies were filled . . . there are now fully twenty nominees in the field who have been approved in past Bar Primaries, so that there will be presented to the voter an opportunity to cast his ballot, if he so desires, for candidates deemed worthy. This was the first objective of the Association and it has been attained. . . .¹⁰

A third ticket of political unknowns was also entered under the slogan "the People's Judiciary party."

Under existing legislation an alderman, Frank J. Corr, had been chosen "interim mayor" pending the passage of an act extending the scope of choice. (See *Chicago Daily News Almanac*, 1934, pp. 903, 904.) It was reported that Mr. Corr was to receive a judicial nomination for acting as a stop-gap. He was passed over in 1933, and was nominated in 1934, but died before the election.

To pass "emergency" legislation, a two-thirds' vote is required. The Democrats controlled a majority, ordinarily required, but under this rule, the act would not have become effective until July 1. Therefore, with the help of Republican votes, the Democrats passed the legislation on March 30 and the City Council chose Edward J. Kelly as Cermak's successor, April 13, 1933. See *Chicago Herald and Examiner*, March 17, 1933.

⁸ Judge Brothers apparently was omitted for reasons other than Bar opposition. It is an interesting fact, however, that in June, 1934, he was elected to the Superior Court as a nominee on the Democratic organization coalition ticket, the same group that had denied him re-election in 1933.

⁹ See the *Chicago Daily News*, April 18, 1933.

¹⁰ Charles P. Megan, statement of May 3, 1933.

The Democrats thus opposed the suggestions of the Bar Association in respect to coalition and in renominating five judges whom it had disapproved. But they had renominated all of the incumbents whom the Bar had approved.

The Republicans, on the other hand, had refused renomination to three disapproved incumbents (Judges Rush, Feinberg, and Klarkowski) but had renominated Judge D. M. Brothers. However, the Republicans, encouraged by the Association, had presented a complete slate and thus nominally avoided a closed coalition. Actually, however, this latter action was merely a gesture, for the Republican leaders knew too well that the Democratic nominees would be victorious.¹¹

As matters thus stood, the Bar Association had reason for gratification and also cause for deep anxiety. It had seen all of the judges renominated of whom it approved. It had apparently defeated a closed coalition, and had lists of candidates from which to choose enough qualified persons for all of the offices to be filled. On the other hand, all of the six judges to whose re-election it was opposed, had been renominated; and five of them were under auspices which assured their re-election. Consequently, the Association was to be defeated in its most important objective.

The Bar Association's campaign.—The Association's campaign, conducted under Henry A. Gardner as chairman, is noteworthy for the thoroughness with which the electorate was approached and for the amount of co-operation received from nonpartisan groups. The Association's rooms became the headquarters of a large professional staff experienced in conducting such "drives." More than \$26,000 was expended to "put the Bar ticket across."

The campaign plan was as follows:

1. Ward and community organizations, with headquarters in as many separate voting divisions as possible, were formed to interest the voters and to get them to the polls on election day.

2. Contact was established with citizen organizations and their co-operation obtained in distributing information and sample ballots and in financing the campaign. Special groups that thus co-operated were:

- a) A special campaign division was established, with a socialite chairwoman, to arouse women's clubs, etc. A campaign meeting, held May 11, was attended by ninety women representing twenty-six distinctively different groups of women.¹²

¹¹See statement on page 98 of this chapter for evidence in support of this assertion.

¹²The organizations represented at this meeting were: Alliance of Business and Professional Women; the Big Sisters Association; the Business and Professional Women's Club; the Catholic Women's League; the Chicago Association for Child Study and Parent Education; the Chicago Conference of Club

b) A group of civic organizations was enlisted through a committee calling itself the "Joint Committee for the Co-operation with the Chicago Bar Association for the Election of Qualified Judges." This committee had co-operated with the Association in several earlier campaigns and more or less laid the groundwork for activity which bore fruit in this campaign.

c) The co-operation of business organizations and industries was obtained.

d) The co-operation of church and religious groups, such as the Chicago Church Federation, the Christian Citizenship Council, and the Better Government Association, was aroused.

3. Speakers were provided to address meetings of organizations in the foregoing groups. Sixty-two such addresses were made.

4. Marked ballots to the number of 1,700,000 were distributed approximately as follows: by the women's division, 100,000; by the civic organizations, 1,000,000; through the ward and community organizations, 600,000. Included in these totals were approximately 60,000 ballots distributed to the employees of 147 business firms.

5. An extensive advertising campaign was conducted through the following channels:

a) One hundred sixty billboards, sixty of which were illuminated, were rented and a large poster was placed on each. Forty boards were on boulevards, 20 were on arterial county highways, and 100 were on carline streets or streets with heavy traffic.

b) Ten thousand automobile stickers were distributed.

c) Advertisements containing a sample marked ballot were inserted in newspapers just preceding the election.

d) On the day before election and on election day, sound trucks drove through the outlying sections blatantly urging citizens to go to the polls and to vote the Bar ticket. On Sunday three trucks were in use, and on election day four outfits spread the word.

e) Radio was employed extensively during the last ten days of the campaign. A special ruling was obtained from the Federal Radio Commission authorizing stations to differentiate between the Bar Association addresses and regular political speeches on the ground that the Association was not a political party.

Presidents; the Chicago Conference of Jewish Women's Organizations; the Council of Social Agencies; the Federation of Settlements; the Chicago Section of the Council of Jewish Women; the Chicago Teachers Federation; the Chicago Woman's Club; the Chicago Woman's Aid; the Chicago and Cook County Federation of Women's Clubs; the Cook County League of Women Voters; the Federation of Colored Women's Clubs; the Federation of Women High School Teachers; the Illinois Conference of Parents and Teachers; the Illinois Women's Athletic Club; the Woman's Bar Association; the Woman's City Club; the Woman's National Republican Club; the Woman's Progressive Club; the Woman's Protective Association; the Woman's Trade Union League; and the Woman's University Club.

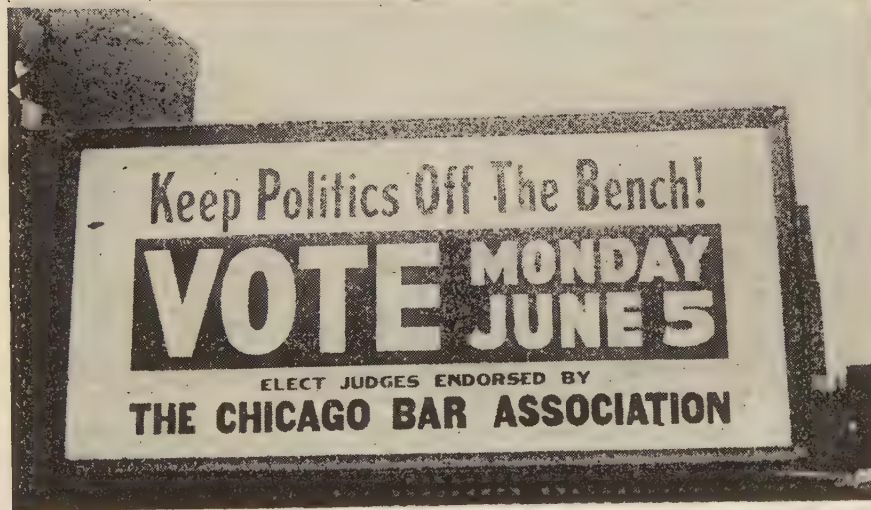


Figure 1.—(Top) Outdoor bill-board displays used in the June, 1933, campaign. (Bottom) How candidates utilize the Association's endorsement.

The Association was "on the air" eighty different times during the final ten days of the campaign.¹³

6. The newspapers gave the judicial election and the Bar Association program an unusual amount of publicity. The receivership scandals, involving Judges Feinberg and Klarkowski in particular, affected many voters adversely and provided one of the much-needed issues to arouse public interest in the campaign. Campaign news items may be classified in three types: (a) favorable; (b) adverse; and (c) neutral.

a.) Favorable mention was given in the papers, to the total of 2,494 column-inches, or approximately 114 columns. These figures are listed in Table XIII.

TABLE XIII
PRESS SUPPORT OF THE BAR ASSOCIATION'S TICKET IN 1933

Paper	Editorial	News Columns	Total
<i>Daily News</i>	155	618	773
<i>Times</i>	29	95	124
<i>American</i>	28	347	375
<i>Tribune</i>	25	619	644
<i>Herald and Examiner</i>	36	480	516
<i>Journal of Commerce</i>	7	.....	7
<i>Abendpost</i>	17	38	55
Total.....	297	2,197	2,494

b.) Unfavorable publicity amounted to about 400 column-inches. This included the testimony of Judges Feinberg and Klarkowski and others before the legislative inquiry into receiverships, and articles criticizing the Association for objecting to certain judges primarily because of their age.

¹³ The radio schedule in the 1933 campaign included the following broadcasts:

Station	Appearances	Remarks
WENR	1 5-minute talk	By courtesy of NBC
WENR	1 15-minute evening program	Purchased by CBA
WLS	16 50-word statements	Given mornings and evenings during final eight days of campaign
WMAQ	6 15-minute programs	Purchased by CBA
WMAQ	8 5-minute talks	By courtesy of NBC
WMAQ	6 50-word statements with time signals	
WCFL	10 5-minute talks	By courtesy of NBC
WCFL	20 quotations from civic leaders	Time purchased by CBA at reduced rates
WIBO	12 5-minute talks	Read on election day
		By courtesy of Wilcox Cake Co.

c) About 1,024 column-inches of neutral publicity dealt with the judicial election, but made no specific reference to the Association.

Although no paper made a "crusade," as the *Tribune* had done in 1921, no metropolitan newspaper indorsed Judges Feinberg and Klarkowski; only two supported Judge Fisher. Biographical sketches of the candidates printed in the *News* and *Tribune* usually quoted the Association's characterizations and ratings of the candidates. The *Daily News* not only adopted the Association's recommendations as its own, but ran the list of endorsements as its editorial leader for several days preceding the election.

The result of the campaign.—The Democratic ticket, containing the incumbent Republicans and Democrats, polled an average of 525,000 or 73.6 per cent of the vote cast. It overwhelmed the total Republican vote of 150,000 and the average of 25,000 ballots cast for the "People's Judiciary" nominees.

The Association was thus unsuccessful in defeating the five incumbents on the Democratic ticket whom it had specifically disapproved. As in previous contests, there were evidences of the Association's influence in the larger votes polled by candidates whom it indorsed, but it was unable to carry the politically weak candidates over the top. In the Democratic ticket, for example, there was a gap of 32,000 votes between the last man in the list supported by the Bar and the top man opposed by it. In the Republican list there was a gap of 12,000 between similarly placed candidates. Sixteen out of a list of twenty-four successful candidates bore the Bar Association's indorsement. However, only twelve of the twenty judges elected to the Circuit Court were thus indorsed.

Bar prospects analyzed.—In view of the strenuous efforts exerted by the Association, and the meager outcome, it is worth while to seek an explanation.

The miscarriage of the Association's plans and failure to attain all of its objectives are perhaps surprising in view of the favorable circumstances that existed for a "moral" uprising. The Democratic ticket was an anomalous combination of "good" and "bad" candidates. It contained two candidates who had been rejected by their own organization associates for transgressing the party code in voting with the Democratic minority on the Circuit Bench under a bipartisan agreement for patronage distribution. These same candidates were the objects of severe attack by the Association. Their judicial records were fully exposed. Their partisan political acts were disclosed.¹⁴ Here were the horrible realities the mere forecast of which twelve years earlier had induced a popular uprising and repudiation.

¹⁴See chap. xxiii, p. 289 ff.

Two circumstances probably account for the result. In the first place, the disclosures of receivership scandals reflected upon the integrity and ethical conduct of lawyers as well as judges. Although the Association had investigated and condemned the abuses, its action came too late. While it condemned the practices, it could not punish the perpetrators. Furthermore, the activities of criminal lawyers had cast a heavy shadow over the entire profession. The general voter discounted the Association's belated protestations against many abuses. To the average "man in the street" the many allegations of favoritism and of greed for high fees appeared to tar the good and bad elements of the profession with the same stick. This private attitude undoubtedly cost the Association many thousands of votes.¹⁵

In the second place, and more significant in determining the result, was the fact that the local Democratic organization was politically impregnable. By astute balancing of issues and forces, and irrespective of any opposition that might develop, it was in a position to elect any ticket that bore its indorsement.

The Democrats were in the hey-day of an all-time dominant position. The party was supreme nationally; its standard-bearer had recently been inaugurated as president of the United States, and during the local judicial campaign was leading a phenomenally successful campaign on a platform of economic recovery. All of this gave powerful momentum to the local Democratic drive. With a few inconsequential exceptions, the local organization also had placed its representatives in all city, county, state, and federal offices affecting Chicago. Thus, with practically all of the patronage and with an unusual amount of prestige, there was every prospect that the Democratic party would sweep its candidates into office by overwhelming pluralities.

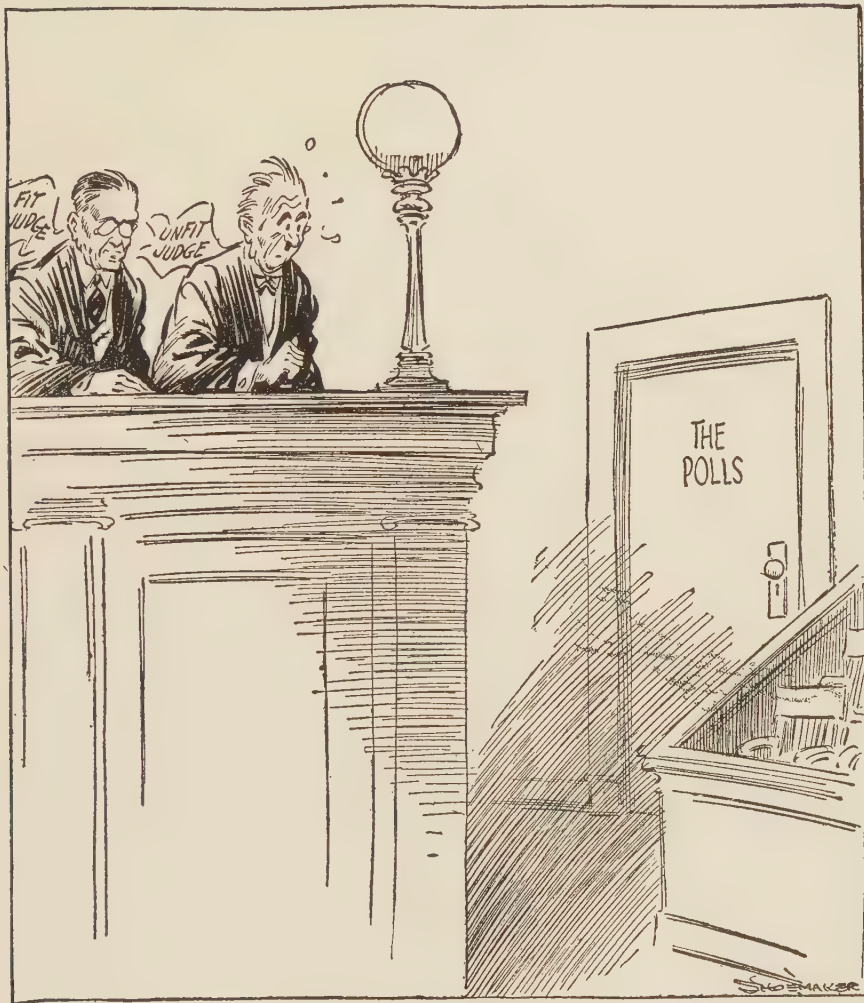
This course appeared all the more probable in view of the utter disorganization and discouragement of the local Republican party, whose opposition ranks were split into four or five factions.

The real reason for the Democratic fusion slate lay in the bipartisan agreements with the respective Republican factions for patronage control. By pursuing this course the Democratic organization could maintain its control and also extend its sway in the local courts without a serious or expensive partisan contest.

As a result of this election, the Democrats made a net gain of four positions in the local judiciary. By adding three Democrats to the Circuit Bench they gained a clear majority in that court for the first time in many years. But, as previously stated, they had exercised control theretofore by the support of the two Crowe Republican judges. They also added a Democrat in place of a Republican, to fill a vacancy on the Superior Bench.

¹⁵See chap. xxii, page 246, for evidences of this attitude.

AWAITING THE VERDICT



Reproduced by permission of *The Chicago Daily News*.

Figure 2.—*The Chicago Daily News* published this striking cartoon by its staff artist, Vaughn Shoemaker, near the end of the 1933 campaign. But the verdict was "Not Guilty"!

As a matter of fact, the Democratic nominees comprised a coalition slate. The Republican members who withdrew from the regular Republican ticket did so on the advice, and with the consent, of the regular Republican leaders.

"We can't elect you on our ticket. We advise you to go over to the Democrats. Only help us to get the best bargain we can on the number of Republicans on their ticket," was essentially the way the Republican leaders expressed it in advising the Republican incumbents to withdraw from the Republican slate.¹⁶

The presence of two regular party tickets in the field really appears as bipartisan strategy. By nominating a complete Republican ticket, the Bar Association's fire was partly diverted from the conspiring party leaders, who would foist coalition upon a helpless electorate, to the candidates whom the Association had condemned as unfit judges. The Republican ticket, in effect, was a "pushover." The People's Judiciary ticket also "never had a chance." The party leaders had been vigorously criticized in 1927, 1928, and 1929 for placing only one coalition ticket in the field and thus practically disfranchising the voter. The Republican ticket of 1933 covered this situation nicely.

In short, the Association played a lone rôle in this contest. The results demonstrated anew that practically insurmountable obstacles confront a voluntary agency which seeks with a hastily assembled staff to combat the trained professionals of the political organizations.

The Superior Court elections of 1934 and 1935.—The political control which marked the election of June 5, 1933, continued unabated in the regular Superior Court contest of June 4, 1934, and the special judicial election of July 1, 1935. In reality, these situations marked the logical culmination of the coalition principle as applied under dominant political control. Both "elections" occurred merely in name, for in each circumstance only a *single* ticket was presented to the voters. Furthermore, the nomination of each candidate was dictated by the Democratic bosses. With absolutely no choice as between candidates, only 115,010 electors went to the polls in 1934 and upwards of 217,570 in 1935. In the 1934 episode the Democrats showed how a well-regulated organization can rise to an emergency by polling 57,268 "write-in" votes for Cornelius

¹⁶ Statement of a Republican judge on the Democratic ticket to the writer. This statement was confirmed by Judge Mary Bartelme in an address to the Woman's Republican Club of Illinois at the Hamilton Club. She is reported to have said: "For several weeks prior to the nominating conventions of both parties, coalition as a necessary method to assure the retention in office of capable, efficient, and experienced judges, regardless of their party affiliations, was advocated. The action of some of my Republican associates among the sitting judges in electing to accept a place in the Democratic column was arrived at only after they had been advised to do so by the leaders of their organizations" (*Chicago Tribune*, April 25, 1933).

J. Harrington to fill a vacancy occasioned by the death of Frank J. Corr, the candidate duly nominated, only a few hours before the polls opened.

From the standpoint of the Bar Association both elections had more to blame than to praise. It was gratifying that, as in 1933, several able Republican incumbents were saved by coalition. But at the same time coalition accomplished the election of some men whom a Bar primary had stamped as utterly unfit. One of them, a Republican, was nominated against the protest of several Republican ward committeemen. Another Republican received a fitness rating of only 25 per cent.¹⁷

In a statement issued May 23, 1935, the Association vigorously condemned coalition nominations for the judiciary. It said, in part:

. . . . While appointment of judges by responsible agencies may be desirable and preferable to popular election, no defense can be presented for appointment by political bosses who can be held to no responsibility for the appointees.

The Chicago Bar Association realizes the defects of the present system. Knowing under present conditions the impossibility and futility of presenting an independent slate or even a few independent candidates in opposition to the combined political parties, and having been advised for some considerable time that a coalition ticket in the present judicial election was inevitable, it attempted to influence the party committees to nominate worthy candidates. In the face of protests by the Association the political bosses have named some men condemned by it. This is to be expected where judicial office is made the subject of barter and where political debts are paid by balloting places on the coalition ticket to candidates named by leaders of factions. The present situation is the work of both parties. . . . The Republicans selected some thirty odd names to be presented to the Democrats for their choice. Of this entire list only a few were qualified by education, training, experience and reputation to fill the high office of judge the coalition ticket includes men of both parties who are entirely worthy of the office, it also includes men who by vote of the Association are held not to be qualified and whose selection is offensive to it.

The Chicago Bar Association condemns this method of selection of judges; it also condemns the political committees who have seen fit in the face of protest to nominate candidates who are entirely unfit.¹⁸

The *Daily News* well characterized these situations when it said:

Hidden beneath a legal elective system we have a non-legal appointive system of the most vicious kind. The balloting merely screens the operations of the party machines. Yesterday the screen was scant enough for all to see under it. The wise thing would be to take it completely down and establish legally an appointive system that would be non-political and openly responsible.¹⁹

¹⁷ This same candidate was one of the judges whom the Association less than a year later rebuked for too much partisan political activity. See *Chicago Tribune*, March 15, 1936 and May 12, 1936. Five other judges were cited for violating the canons of judicial ethics of the American Bar Association by too much personal partisan political activity in the April, 1936, primary campaign. In protest, 43 judges resigned from the Association.

¹⁸ *Chicago Bar Record*, XVI, 267-68.

¹⁹ *Daily News*, June 6, 1934.

CHAPTER XIII

THE DEVELOPMENT OF THE BAR PRIMARY IN CHICAGO

WHAT IS THE BAR PRIMARY?

The Bar primary is the basic feature of the Association's participation in judicial selection. In itself the primary is merely a method for polling the Association's membership with respect to a policy or program of action or concerning the respective merits of individual candidates.¹ The results of a Bar primary, however, constitute a representative consensus of the active practitioners. As such it gives a broad foundation for the Association's advisory recommendations. It provides one of the strongest justifications for the Association's participation in the selective process.

DIFFICULTIES INVOLVED

The Bar primary presents three types of difficulties. First, there is the matter of what the qualities deemed desirable in a judge are, and of establishing satisfactory standards of appraisal. Second, the comparative fitness of the individual candidates must be estimated accurately and impartially. Third, there is the problem of accurately recording the ratings of several thousand individual lawyers concerning hundreds of candidates. Even the earliest instances of Bar activity involved many candidates for a few offices and a Bar numbering several hundred members. The attempt in 1870 to agree upon candidates by the viva-voce method resulted disastrously, in part, because of this difficulty of many minds meeting on obscure matters. The problem of polling the Bar became more difficult as both Bar and Bench increased.

STAGES OF BAR PRIMARY DEVELOPMENT

To meet these difficulties and to give greater accuracy to the poll, the Bar primary in Chicago has undergone a series of systematic developments. Over the long period during which Bar primaries have been held, it is possible to mark eight distinct stages at which the plan has undergone important changes. These are as follows:

1. 1870: Nomination by independent petition; attempts to nominate at conventions of the Bar.
2. 1887: Personal attendance by the lawyers at a central polling-place.
3. 1891: The adoption of the Australian ballot system for Bar primaries and the inauguration of the vote by mail.
4. 1898: The Bar primary becomes an advisory referendum.

¹See chap. xxvii for consideration of the effectiveness of the Bar primary as a means of improving the quality of judicial selection.

5. 1903: Shifting the Bar primary from a Bar-wide basis to a poll of only the Association's own members.

6. 1906: The use of a printed report to describe the qualifications of candidates and an estimate by a committee concerning each candidate's merit for judicial office.

7. 1921: The appointment of a permanent committee on candidates.

8. 1930: The adoption of a referendum upon specific personal qualifications of each candidate in addition to the preferential poll upon the candidate's fitness in relation to all others seeking the office in the same contest.

The situations in which these modifications occurred will now be described for the important bearing which they have on the entire subject under investigation.

Stage 1.—We have seen that in 1870 it was quite common practice for the members of the Bar to nominate candidates for the Bench. The devices employed were the open letter "drafting" the candidate and the convention system. The first operated on the principle of unanimous consent, and the second by majority rule. Both plans obtained a consensus of the Bar, but assumed that the candidates were sufficiently well-known for each attorney to vote without special assistance. The referendum failed in its purpose because of disagreement over the system of nominating candidates.

Stage 2.—A formal ballot of the Bar on judicial candidates did not occur again until 1887. The Bar had expressed itself, however, through the medium of petitions requesting the incumbent judges to be candidates for re-election. In the special judicial election of June 6, 1887, a preferential referendum was taken on candidates nominated by the political parties and by independent petition. The proceedings were a miniature election among the members of the Bar. The attorneys appeared in person at the headquarters of the Bar Association to cast their ballots. The various groups of candidates appointed observers to watch the ballots counted. We have here the basic principle of the Bar primary applied in person rather than *in absentia*.

Stage 3.—In 1891 the Bar seriously attempted to institutionalize the Bar primary as a part of the nominating process. An elaborate code was adopted which set up a complete procedure for nominating candidates for the primary, taking a ballot of the Bar, and apportioning nominees among the political parties.

In October, 1890, the Bar Association started consideration of two suggestions for improving the Bar primary. One was to provide for a caucus of members of the Bar to make judicial nominations. The other was submitted by John Lyle King, who twenty years earlier had proposed the plan of a Bar primary. He now proposed that a secret vote, patterned after the Australian ballot

system, be provided for. After lengthy discussion, Mr. King was made chairman of a committee² to draft a Bar primary code.³

The code specifically recognized the "comity of the two political parties by which the judicial offices of the Circuit and Superior courts of Cook County have been equally apportioned between them" and declared further, the desire of the Chicago Bar to "preserve such equilibrium of parties in the judiciary, as far as practicable." To that end, the Chicago Bar

hereby in General Meeting assembled, initiates and establishes a method of Bar Primary Elections for nomination of candidates for all judicial elections to be held hereafter in Cook County; and the Chicago Bar hereby adopts and pledges itself to maintain and regulate the same under this code of articles.

The political equilibrium was maintained by providing that

The number and political standing of the candidates to be nominated are determinable by and are to be in conformity with the number and political standing of the incumbent or incumbents whose seats are to be filled. If more than one judge is to be elected, the candidates to be nominated must be of the same party in politics as are the several judges whose successorship is involved. If only one judge is to be elected, candidates for nomination must be those only who are of the political party of which the incumbent judge is a member. Only a Democratic candidate can be a nominee for the seat of an incumbent Democratic judge, and only a Republican candidate can be the nominee for the seat of an incumbent Republican judge; provided, however, in the case of a judge appointed by the Governor to the vacancy of an unexpired term when the appointee is of different party politics from those of his predecessor, the candidate to be nominated must be of the political party to which the predecessor of such appointee belonged; and provided, also, in the case of addition by the Legislature to the number of judges for Cook County, the rule of equal division according to the party of such judges shall apply to the additional judges and to candidates for nomination to such newly created offices. When a County or Probate Judge is to be nominated, the rule that the nominee for such office must be of the same political party as that of the incumbent whose term of office is to expire, shall not apply, but a candidate of each party shall be nominated at the bar primary.

²Its other members were Jeremiah Leaming, Adolph Moses, Francis Lackner, and E. W. Adkinson.

³The Bar primary code of 1891 contained eight provisions, as follows:

a) A committee of fifteen members, to be appointed at the annual meeting of the Chicago Bar Association, was empowered to convene a general meeting of the entire Bar of Cook County "to consider and act upon any matter of interest to the bar . . . and perform any other special duty for the time being which the general meeting of the Bar may impose."

b) A primary election board of five members, appointed by the foregoing committee, was to conduct the Bar primary elections and was to administer the provisions of the code.

c) *The Law Bulletin* and the bulletin board of the Law Institute Library were designated as official places for posting election notices, announcements of candidacies, and election results.

d) Official ballots, so marked and stamped with the initials of the chairman of the board, were to be mailed to each practicing member of the Bar of Cook County listed in the last previous law directory. The balloting was to continue until 9 o'clock, forenoon, of the fourth day after the outgoing ballots had been deposited in the post-office. The official ballot box was to be a private, rented post-office box, securely locked and of the key to which the chairman of the board was to hold exclusive custody.

Also, on the Primary ballots the candidates of each party were to be listed in separate columns.⁴

Three Bar primaries were held under the Code of 1891.

1. The first primary was held May 8, 1891, with forty-two candidates entered for eleven positions. A total of 1,378 votes was polled, representing approximately 58 per cent of the entire Chicago Bar. Four Democratic incumbents and four Republican incumbents were nominated on the first ballot, but three nominations remained to be made. A supplementary primary was therefore held eleven days later. It brought out 1,171 votes, or about 49 per cent of the possible total. A Democratic and a Republican incumbent, who in the first primary had failed of nomination by extremely narrow margins, were now nominated. But one Democratic nomination yet remained unfilled, as no other aspirant had polled the number of votes necessary to nominate. A second supplemental primary was therefore held.

It is not known to what extent the party leaders had expressed willingness to accept or to be guided by the results of this Bar primary. The same edition of the *Legal News* which reported the provisions of the Bar primary code, however, noted also that "without waiting to hear the result of the Bar primary," the Republican county committee and the Harrison wing of the Democratic party, had united upon a judicial ticket including all the sitting judges who were candidates for re-election.⁵ For the vacancy, the bipartisan combination nominated a candidate whom the Bar primary had not even voted upon.

e) Candidates were limited to "any member of the Cook County Bar of reputable standing who had been licensed by the State Supreme Court." A written and signed announcement stating the party politics of the petitioner, or a commendatory call, signed by not fewer than twenty members of the Bar, were required for candidacy. The announcement was to be addressed to the Bar primary board and had to be accompanied with an advance "of not less than fifteen dollars to form a fund for the expenses of the primary election." Any unexpended surplus was to be refunded proportionally to the contributing candidates.

f) Only unsigned, official ballots, received through the mail, were to be counted. Ballots had to be marked by crossing out all names of candidates not voted for. Precisely the number of candidates to be nominated on both party tickets had to be marked. Otherwise, the ballot was void.

g) A majority of all votes cast constituted a nomination. In case of incomplete nominations, a supplementary election was to be held immediately. The supplementary ballot was to contain the names of three times as many candidates on the list, of either party, as there were yet to be nominated. The names were to be listed, from high to low, in accordance with the vote received in the first election. In case of incomplete nominations, a second supplementary primary was to be held, but if a tie resulted, the result was to be determined by lot.

h) The Bar Committee was also empowered to appoint a committee to promote the election of the nominees.

⁴A printed copy of the Chicago Bar primary code is included in a bound volume of Chicago Bar Association reports and documents in the Chicago Public Library.

⁵*Chicago Legal News*, XXIII (May 9, 1891), 299.

In the election of June 1, 1891, the coalition slate was victorious. Francis Adams, whom the Bar had not even considered, polled a vote of 36,396 and ran 5,000 votes behind the lowest incumbent judge, but was still 14,000 ahead of Henry McKey, the nominee of the Bar for the vacancy.

2. In the fall of 1891, the same system of nominations by the Bar was followed for two Superior Court judgeships. In the first poll, Judge Theodore Brentano was nominated to succeed himself, but no candidate for the other position polled a majority. In the supplemental poll Henry McKey again won the Bar nomination, leading Sigmund Zeisler by a vote of 644 to 536. But in the election McKey again lost to an opponent (Hutchinson) who had not been entered in the Bar primary.

3. In the fall, 1893, judicial election four Democrats and four Republicans were to be nominated for three new positions in each of the Superior and Circuit courts; for the Superior Court position held by Judge Gary and for one vacancy. The Bar primaries were held in midsummer (July 29 and August 7), well in advance of the November election. From a list of twenty-six candidates, four were named for each party. But in this interval two additional vacancies occurred, leaving the Bar's list of nominees four men short. Again the parties largely disregarded the Bar's suggestions, for of the twenty men actually named by the parties for the ten positions, only seven had appeared on Bar primary slates; and of these seven, only five had been indorsed, under the rule requiring a majority of the votes cast. Only one of four Democrats proposed by the Bar found a place on the party slate; and he was defeated in the election.

The elaborate plan for a secret ballot of the entire Bar under the code of 1891 had thus produced indifferent results in three trials. The plan combined the essential points of a nominating system and was "practical" in being adapted to maintain the political *status quo*. The Bar's efforts in 1891 had perhaps helped to re-nominate the incumbent judges, but when a new aspirant was encouraged to run for two different offices he lost both to men who had the requisite political backing.

Stage 4.—When the Association, in 1898, renewed its activity, the Bar primary became an advisory referendum. Its efforts were different from the earlier plans in two important respects. In the first place, the primary was held *after* all nominations had been made, and became a means of expressing a preference among the nominees on their individual merits to hold judicial office. In the second place, the candidates were voted upon as individuals and irrespective of their partisan affiliations. Thus, instead of voting for a specific number of Democrats and Republicans, the number

of candidates to be voted for was determined by the number of places to be filled in the election.

The new plan represented a distinct reversal of the earlier intention of seeking to "nominate candidates by influencing the selections of party leaders." The Association was now careful to avoid "political" activity.

"It is not the intent of the Association, as such, to engage in any way, shape, or manner, in the coming election," declared President George A. Follansbee, in his annual report rendered a few days before the judicial election.

The result of the vote just taken will be published and allowed to be given only such weight as the public may attach to it, and beyond that nothing will be done by the association. Whether or not it will influence any voters in favor of its candidates who have received the most votes will depend, of course, upon the publicity which is given to the result of our ballot, and the weight which will be attached to our choice. At all events, it was thought that no harm and possibly some good, might come from such an action.⁶

Mr. Follansbee also recounted the circumstances which induced the Association to take up the matter again, as follows:

Both the Republican and Democratic parties have this year nominated full tickets. . . . Shortly after they were put into the field a suggestion was made to me from one of the leading members of the Bar, that this Association ought to indicate in some manner the preference of its members for the nominees. The matter was in due course brought before the board of managers, and the desirability and objections thereto were considered at considerable length. The outcome was that it was determined that this association would take no part in the election, beyond asking its members to indicate an expression of opinion as to which of the candidates named were most worthwhile, by reason of their character and ability to receive the votes of the people. It was felt that there were a large number of voters in the county who were not personally acquainted with the candidates, and whose votes might to some extent, at least, be influenced in favor of such men as might be named by a majority of our members, as indicated on a ballot taken without an opportunity being furnished for any electioneering for any of the candidates.⁷

During the next eight years, five Bar primaries were held. By the date of the election of the entire new Municipal Court in 1906, the plan of the Bar primary as formulated in 1898 had tended to become standardized and accepted as a traditional activity of the Chicago Bar Association. Another circumstance which undoubtedly contributed to this activity was the fact that throughout this period the custom of bipartisan nominations lapsed. Complete tickets were nominated by both major parties, and frequently by the Socialists.

The need for an impartial estimate of candidates' qualifications, such as was provided by the Bar primary, increased as the various benches were lengthened. The situation reached a high point in the Municipal Court election of 1906.

⁶*Chicago Legal News*, XXXI, 77.

⁷*Ibid.*

Stage 5.—When the Bar primaries were renewed in 1898 the Association voted to confine the poll to its immediate membership. Prior to 1893 the primaries had been Bar-wide. In 1902 the Association temporarily reverted to the Bar-wide basis. But since 1903 the poll has been strictly limited to the membership of the Association.⁸

Stage 6.—Prior to 1906, the vote had been based entirely upon the lawyer's general knowledge of the candidates. Up to that time, also, the number of positions to be filled in any one election was usually comparatively small, and the candidates were likely to be personally known by their fellow-members of the Bar. The records of individual candidates were usually discussed in the columns of the daily press—especially in cases where the candidate's fitness was questioned. The *Legal News* also published candidates' photographs and biographies. From these various sources, as well as from private information, the lawyers could without hesitation express an intelligent preference among the nominees.

But in the Municipal Court election of 1906, the 91 candidates for the new court, in addition to those for the County and Probate judgeships at the same election, presented a new problem. To meet it the Association appointed a special committee to study the candidates' records, and to report upon their fitness for the Bench. An important phase of this investigation was a list of questions which each candidate was requested to answer concerning his education, experience, and record of public service. This information became the basis for descriptions, prepared by the committee, which accompanied the ballots in the Bar primary.⁹

The findings and conclusions of the committee were then printed in report form, and were circulated among members of the Association for their information and guidance in voting at the Bar primary. The press, in turn, made front-page news of them.

From 1910 to 1916 these estimates of the Committee on Candidates were omitted; but with these exceptions, the Committee's characterizations and comments have become part and parcel of the Bar primary plan.

The 1906 campaign also served to establish the Bar primary more firmly as a regular activity of the Association. Discussing this matter at the annual meeting of the Association a few days after the election, President Horace Kent Tenney said:

Perhaps no matter which the Association has taken up is of greater im-

⁸See discussion in chap. XVI of extent to which the Association represents the Bar as a whole.

⁹The items of information called for from each candidate included the following: age; birthplace; schools, colleges, and law schools attended; academic degrees received; date of admission to the Bar; firms with which associated as attorney; character of law practice; public offices held; membership in professional associations; references.

portance or has attracted greater attention than its work in connection with the judicial elections and this presents the question as to the extent to which the Association should go in these matters and as to the extent to which the action of the Association should be regarded by its members as binding upon them.

The principle of the Bar primary is now recognized as a good one, and the Association has definitely committed itself on that question, to the extent at least of giving a recommendation based upon the vote of its members. We may therefore regard the question of holding such primaries in the future as settled, and are thus confronted with the question whether the purpose for which we are organized requires that we should take a more active part in elections, and if so, to what extent we should go.

By some it is thought that the Association should not merely recommend a candidate, but that it should carry on an active and effective campaign in his behalf. It has also been suggested that the Association ought to take upon itself the nomination of candidates and not limit its work to a recommendation for those who are nominated by the political parties. Others believe that this work would be a departure from the purpose of the Association and would take us into a field of partisan controversy which would dissipate our efforts along lines in which our usefulness has been demonstrated and in which we are only workers.

The board of managers have felt that the Association can not be regarded as, in any sense, a political organization, and that therefore, it does not fall within the power of the board of managers to inaugurate an active campaign on behalf of a candidate, such as would be carried on by a political party. They have also felt that, aside from the mere question of power, it was not expedient for the Association to nominate a ticket to be placed on the official ballot. It is of course apparent that the funds and resources of the Association are by no means adequate for the expenses necessarily incident to such a campaign, and that our treasury would be speedily exhausted by the first campaign in which we took part. To carry on a successful campaign in these days requires the organization of a working force far exceeding any we have at our command, and which could only be provided through outside assistance. For these and other reasons the board have not felt authorized to regard the recommendation resulting from a Bar primary, as authority to them to do more than strive to secure the election of the successful contestant through the influence which the recommendation itself gives when brought prominently before the voters, both personally and through the press.¹⁰

Modifications of the Bar primary plan since 1906 have usually been in the direction of making the Association's expression of opinion more precise.

Stage 7.—In 1921, the Committee on Candidates was made permanent by automatically constituting the past presidents of the Association as its members. Thus, it was reasoned, the committee would consist of persons who had achieved distinction within the profession, and who would give the committee a continuity greatly to be desired. But this method of appointment was quietly abandoned in 1933 in an obvious desire to free the plan from any possible objection.¹¹ The immediate occasion of the change was the circumstance that a majority of the committee came from five law

¹⁰*Annual Report*, November 8, 1906.

¹¹See letter of Howard P. Castle in *Chicago Bar Record*, XV (April, 1932), 63.

firms, each of which contained two past presidents. This fact unwittingly gave substance to the complaint that a small clique controlled the indorsements of the Association.

Stage 8.—In 1930, two modifications were introduced which give the primary plan greater precision and clarity. In addition to the usual questions as to biography, training, and experience, the members were asked to record their views on a "Yes-No" basis concerning each candidate's demonstrated conduct and capacity. Concerning those who had held judicial office, either as judges, masters in chancery, or assistants to the probate judge, these questions were asked:

Have you appeared in his court?
Does he open court promptly?
Is he diligent in the dispatch of business?
Is he attentive and fair minded?
Does he possess legal ability?
Do you have confidence in his integrity?
Do you regard him as an able judge?

In the cases where a candidate had not held judicial office the final question was phrased: "Has he the capacity to be a good judge?" In such cases, also, the questions concerning aptitude were as follows:

Have you had personal contact with him professionally or socially?
Does he possess legal ability?
Has he a judicial temperament?
Is his reputation at the Bar good?
Do you have confidence in his integrity?

The replies to these questions served as guides to the committee in its consideration of the candidates. In the words of William P. Sidley, its president, the questions were propounded "in the interest of accuracy in the judgment of our Association on the qualifications of the candidates . . . to the end that a more vigorous judgment may be expressed and a sharper cleavage defined between the fit and the unfit."¹²

The second modification was a public expression by the Association of its collective opinion concerning each candidate's fitness for office. Theretofore, the members had voted on each candidate's fitness relative to all other persons in the particular group. In addition to this vote, the members now expressed their collective judgment by a "Yes—No" vote concerning each candidate's ability as an individual to hold judicial office. The two votes were then published side by side as the Association's findings and recommendations. The two sets of figures supplemented each other. They enabled the inquisitive citizen to explain the vote as to preference in terms of the vote as to qualifications.¹³

¹²Communication to the members, September 20, 1930.

¹³The specific reason for the vote as to yes-or-no qualification was the circumstance that neither of the political parties had nominated a sufficient number of qualified candidates to fill all the judicial offices—a fact which became

The Bar primary plan today.—The main features of the Bar primary plan at the present time as are follows:

1. In advance of each judicial primary or election, the Association, either in a meeting of its members or by action of the Board of Managers, adopts a resolution authorizing the collection and publication of information concerning qualifications of candidates, and the conducting of the necessary Bar primary. Each such action is, therefore, an official activity of the Association, and is closely supervised as such by its governing body, the Board of Managers.

2. Each candidate is requested to answer questions touching his or her character, education, experience, general qualifications, and fitness for the office of judge. The questions call for factual information—dates, places, specific achievements, or complaints registered against the candidates' professional conduct, etc. The candidate is also requested to give reasons why he believes himself qualified and fit to be a judge of the court in question.

3. The Committee on Candidates considers these replies, together with such other information as may be available in the Association's own files or from other sources. The committee also interviews each candidate, thereby having an opportunity to obtain the candidate's own explanation of why he seeks the office and of any allegation as to his unfitness to be a judge.

4. The membership of the Association then votes on the candidates. The balloting is secret. Accompanying the printed ballot, which is mailed to each member, is a pamphlet containing the enabling resolution stating the plan and policy of the Association, and the report of the Committee on Candidates. This report consists of three parts: a half-tone of the candidate; a biographical statement of his education, training, and experience, summarized by the committee from his own statements; and the committee's characterization of the candidate and its estimate of his fitness for office.

apparent in the pre-primary vote taken in March, 1930, when only seven Democrats and five Republicans received indorsements (under the rule that at least one-third of the vote is required to confer Bar indorsement).

This situation was emphasized in the filling of the Schwaba vacancy in the Municipal Court, in which Alfar M. Eberhardt, Republican, received the Bar indorsement over Frank X. Derdzinski, Democrat, by a preferential vote of 1,289 to 746, when under the vote as to personal qualification both were declared to be unqualified—Eberhardt by a vote of more than two to one, and Derdzinski by nearly six to one. From the standpoint of a representative opinion, the advantage of these supplementary votes is obviously that the Committee on Candidates had the definitely expressed opinion of a large cross-section of the entire Association as to qualifications of the two candidates; whereas under the former plan, they would have been rated entirely on the basis of the personal opinion of the members of the Committee on Candidates.

This incident, of course, sharply raises the issue discussed elsewhere, as between the seeming futility of the plan of the Bar to judge between candidates already nominated, and the proved uselessness of all recent efforts to influence the original selection and nomination of judicial candidates.

5. In the case of primary-election candidates, the Association practically conducts two simultaneous polls—one for each party.

6. The ballots are tallied by a canvassing committee.

7. The result of the poll is announced in the press and through other media of publicity. The entire list of candidates for each office is published, and opposite each name is recorded the number of votes polled by the candidate. The names are listed according to the number of votes received. The Association then lists as "indorsed" the candidates receiving the highest number of votes up to the number of positions to be filled in each court. However, a candidate is not indorsed, even if he is within the preferential list, unless he has received at least one-third of the total number of votes cast in the primary. The indorsement is shown both by the listing of the candidates with the number of votes polled by each, and by printing the names of those indorsed in bold-face type.

BAR PRIMARY PROCEDURE IN CHICAGO COMPARED WITH THAT IN OTHER CITIES

Bar primary procedures have been classified into three principal types and have been designated by the names of the cities in which they were first adopted. In the "New York plan" committees of an association determine the fitness of candidates. The committee's recommendations are practically final and become the selection of the association without a plebiscite of the membership. The Philadelphia association has a similar plan with the modification that the committee may, if it deems wise, refer the matter to the entire membership.

In Detroit and St. Louis the selection of candidates is made through a plebiscite, leaving to the committee merely the function of initiating and supervising the action of the association.

The third type combines features of the first two plans—namely, it blends the functions of the committee with the referendum powers of the association as a whole. This is the method followed in Chicago, Cleveland, and Los Angeles, although in each instance there are important variations in practice. In each city the committee collects biographical data from the candidates and distributes these in printed form with the referendum ballot. The Chicago Association, however, has taken the next logical step by empowering its committee not only to furnish information, but also to characterize the fitness of the candidates.

In 1926 the Los Angeles Bar Association introduced a plan of voting which required an expression of opinion on one of three points respecting each candidate, namely: "qualified," "not qualified," or "no opinion." The plan provided, further, that no candidate should be considered unless opinions concerning him had been expressed by at least 50 per cent of the total ballots cast. This figure was arbitrarily fixed on the assumption that even though

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Recommendations of the Chicago Bar Association

The Chicago Bar Association recommends for nomination for the office of State's Attorney the candidates whose names are marked below with a cross.

For State's Attorney

Republican

☐ Robert E. Crowe
☐ Maxwell Landis 16
☒ John A. Swanson 2191

Bar Ass'n Votes

Democratic

☒ William J. Lindsay 1837
☐ Daniel F. Murphy 132

Bar Ass'n Votes

The Association also by vote of its members recommends the candidates for nomination for the office of Judge of the Municipal Court whose names are marked below with a cross.

For Judge of the Municipal Court

Republican

☐ Henry E. Ayers
☐ Louis N. Blumenthal
☐ James B. Cashin
☐ Joseph F. Cervinka
☒ George E. Dierssen
☐ Thomas L. Donnelly
☐ Alf M. Eberhardt
☒ Theodore F. Ehler
☒ Frederick W. Elliott
☒ Alfred O. Erickson
☒ William B. Gemmill
☒ John F. Haas
☐ Harry Hamill
☒ Howard W. Hayes
☒ William E. Helander
☐ Marion G. Kudlick
☐ James C. Leaton
☐ Joseph J. Nagle
☐ John R. Newcomer
☒ John R. Philp
☐ Henry M. Porter
☐ John Richardson
☒ William H. A. Rust
☐ George J. Spatz
☐ Charles L. Swanson
☐ Stephen A. Thieda
☐ Leonard J. Wissman

Democratic

☒ Francis B. Allegretti
☒ Frank C. Bicek
☒ Francis Borrelli
☒ Edward M. Burke
☐ John B. Devine
☒ Cassius M. Doty
☒ Philip J. Finnegan
☐ Thomas A. Green
☒ Matthew D. Hartigan
☐ N. A. Lawrence
☒ James B. McKeon
☒ Donald S. McKinlay
☒ Frank M. Padden
☐ Abdon M. Pallasch
☒ Jay A. Schiller
☐ Thomas J. Sheehan

NOTE

The names of Municipal Court candidates have alphabetical arrangement on the official ballot, but rotate as to position in different precincts.

For Judge of the Municipal Court

(To Fill Vacancy)

Republican

☒ Donald H. McGilvray
☐ Robert E. McMillan

The Chicago Bar Association

160 North La Salle Street

CARL R. LATHAM, President

HERBERT M. LAUTMANN, Secretary

Cut This Out and Take It With You to the Polls

(This advertisement paid for by The Chicago Bar Association)

Reproduced by courtesy of *The Chicago Herald and Examiner*.

Figure 3.—A specimen of advertisements used during the November, 1928, campaign, illustrating one method employed by the Chicago Bar Association for presenting its recommendations to the voters.

a candidate were held in high esteem by those that knew him, yet if he was not known by at least 50 per cent of those voting in a plebiscite, his chances for election at the polls would be slight. The rule was also fixed that to be eligible for indorsement a candidate must receive the favorable vote of more than three-fourths of the total opinions registered concerning him.¹⁴

The Chicago, Cleveland, and Los Angeles associations appear to have been the most consistently active groups. Whenever one city has initiated an improvement in the Bar primary technique, the others have been quick to adopt it. As noted in a later section (chap. xiv) the Los Angeles Association's inquiries for the members to answer relating to judicial aptitudes are more incisive and more inclusive than those used by Chicago.

The principal difference between the associations in this function is not in their primary plans, but in their methods of putting the findings into effect.

SUMMARY

The chief characteristic of the Bar's efforts to promote the selection of highly qualified judges has been the poll taken among lawyers either to propose candidates or to determine the relative merits of political nominees. With only a few exceptions a formal poll or Bar primary has been taken in each election situation in which the Bar has participated. The exceptions were instances such as the elections of 1885, 1897, and 1921, when direct action was employed to obtain the desired result.

Four points of contrast in Bar primary history are:

1. The transition from a vote cast in person to a secret ballot conducted by mail.
2. The shift from the Bar-wide basis to include only the members of the Chicago Bar Association.
3. The transition from a nominating poll for the purpose of suggesting candidates to the political parties to a primary for merely expressing preference among candidates already nominated.
4. A noteworthy development has been the improvement in balloting procedure itself, as a method for systematically and convincingly ascertaining and expressing the consensus of so large a group of individuals concerning large numbers of candidates.

The Bar primary, however, is merely a mechanical means to an end. It can only differentiate the material to which it is applied. It does not draft candidates or cannot improve the fitness of those who seek judicial office. Nor does it possess some magic quality which takes the place of a campaign to make its findings known to the voters. The Bar primary, in short, has the defects of its virtues in that it cannot rise higher than the source at which it commences or purify the defects of a polluted stream.

¹⁴*Los Angeles Bar Association Bulletin*, I, No. 13 (July 1, 1926), 3-6.

PART III

AN EVALUATION OF THE RECOMMENDA-
TIONS OF THE BAR

CHAPTER XIV

ARE THE RATINGS AND RECOMMENDATIONS OF THE CHICAGO BAR ASSOCIATION RELIABLE?

PLAN OF ANALYSIS

Are the recommendations of the Chicago Bar Association reliable? Are they based on fact? Are they accurate measures of judicial ability? Or are they, as some persons contend, merely the opinions of a clique of attorneys which seeks to place some of its members on the Bench?

From the viewpoint of the voter in general, the reliability of the Association's recommendations is paramount. And it is the ballot of these voters in general that the Association seeks to influence in sufficient number on election day to assure victory for those candidates whom it has indorsed. Obviously, the Association's position is strengthened, and its influence is increased, to the extent that its indorsements are accepted as "reliable" and to the extent that they have been based upon facts that can be defended.

The question "Are the Bar Association's recommendations reliable?" really means: "Will the candidates that it indorses be good judges?" In order to answer our first proposition, then, we must begin with the question, "What is a good judge?"

If the differences between good and bad judicial conduct could be unmistakably demonstrated, few citizens would re-elect a judge whose record had been shown to be bad. Nor would they be likely to nominate or elect a candidate known to lack those qualities that distinguish a good judge. In other words, we need an acceptable "yardstick" by which to measure judicial capacity in much the same way as the fitness of those who seek admittance to the public professions of law, medicine, or accounting is now determined.

The recommendations of the Bar Association are based on information that contains the essentials of such a "yardstick." Our concern in this chapter is to attempt to isolate these various essentials and to discover to what extent they have entered into the Association's consideration of judicial capacity; and hence the degree to which its recommendations have been reliable.

Our first concern, then, is to identify the essential elements of judicial capacity. In this search we venture into a field in which little progress has been made. As one writer has remarked,

The virtues that should be combined in a perfect judge have been extolled in platitudes which are more literary than accurate; the functions this ideal creature must perform have long been the subject of bar association addresses which were more delectable than penetrating.¹

¹R. L. Mott and associates, "Judicial Personnel," *Annals of the American Academy*, CLXVII (May, 1933), 143.

Such expressions, however, offer a starting-point, especially if they come from persons who know whereof they speak. Authentic descriptions of the judicial function will assist us to identify the specific qualities a judge needs to be an efficient magistrate. Having identified these qualities, we can then attempt to represent them in terms of definite units or standards of measurement, such as the age of the candidate at time of the election, the number of years he attended school, the length of time he has been a licensed attorney, etc. On the basis of this information we can then see how completely the Bar Association covers the essential items of information and what relation the items thus considered have to the ranking of the individual candidates in the Bar primaries. These relationships will enable us to study the Bar Association's estimate of the comparative importance of these various items of information.

This plan of analysis parallels the various stages of reflection through which the thoughtful voter passes in picking out candidates at the polls. From various sources the voter gleans certain items of information about the candidates; he appraises their respective merits in terms of these facts and also in terms of his own standards of desirable conduct; he then groups the candidates into those he favors and into those he opposes. Of course, the entire process goes on in the voter's mind and usually results in a rough, "off-hand" judgment. In this study we have gone through essentially the same steps with the single difference: we have reduced the information to writing and have expressed it in terms which enable us to compare the factors with each other and with desirable standards of qualifications. This method of analysis merely assists the human faculties to systematize their work of investigation.

STEPS IN THE ANALYSIS

The following steps were taken in reaching conclusions concerning the reliability of the Bar's recommendations:

1. *Determining the nature of the judicial function.* From many sources, information and opinions were compiled concerning the duties and responsibilities of judicial office. This information constituted the data on which our analysis was based.

2. *Identifying the qualifications for judicial office.* The next stage was to identify as nearly as possible tangible human qualities required to perform the duties enumerated in the first step. These qualities also were listed from the writings of authorities.

3. *Comparing the qualities deemed desirable in a judge with the points of inquiry adopted by the Bar Association in its investigation of the fitness of candidates.* This step indicated the reliability of the Association's recommendations from the standpoint of the completeness of its investigation.

4. *Devising "yardsticks" to measure judicial qualities.* In this step each quality was converted as far as possible into terms of some commonly accepted standard or measure. The quality of "education," for example, was expressed as the number of years the candidate went to school, on the assumption that on the average the amount of formal schooling a person receives is a general index of his "education." In the same way "yardsticks" were constructed for as many of these elements as possible.

5. *Constructing "yardsticks" to indicate the Bar Association's estimate of each candidate and the electorate's estimate of him as expressed at the polls.*

6. *Comparing, by the statistical process of correlation, the rankings of the candidates as determined by the different "yardsticks."*

7. The final step, of course, was *interpreting the statistical findings and analyzing the results* in terms of the objectives of this study.

Let us now take up each of the foregoing steps and develop the proposition that evidences of judicial capacity can be shown to exist in measurable units.

1. THE NATURE OF THE JUDICIAL FUNCTION

In general, the judicial function "presupposes the use of mental processes in the determination of law or fact and at times involves discretion as to how the power should be used."² But we are more concerned to learn what particular mental processes a judge is expected to employ and the types of discretion he is called upon to use in phases of court procedure. We can find these by making a "job analysis" of the course of a specimen case through the court and by noting the incidental duties of the judge. A felony case will be used as the example, since in Chicago it involves the Municipal Court judges as committing magistrates and the Circuit and Superior judges as trial magistrates.

Duties of a judge.—Ordinarily, in a felony case, the first step is to examine the complainant under oath.³ If the commission of a felony is disclosed, the judge issues a warrant for the arrest of the accused. The judge then hears the evidence. If the judge finds there is probable cause to believe the prisoner guilty, he is required to commit the accused to jail to await indictment. If a contrary finding results, the judge enters an order discharging the accused from custody.

In Cook County the Chief Justice of the Criminal Court convenes the grand jury and receives its indictments.

²*Corpus Juris*, Vol. XXXIV, No. 1182.

³For complete discussion of court procedure in these cases see E. W. Hinton, *Illinois Crime Survey* (Chicago: Illinois Association for Criminal Justice, 1929), chap. III, pp. 195-200.

Upon arraignment, the judge informs the defendant of the charge and hears his plea. The judge fixes the amount of the bail, if the offense is bailable. In default of bail, the judge commits the defendant to jail to await trial. If the legal sufficiency of the indictment is attacked by demurrer or by motion to quash, the judge rules on this point. If the defendant enters a plea of guilty, the criminal code requires the judge to warn the defendant of the consequences before finally receiving the plea. Failure of the judge to do this may make a judgment of conviction erroneous and subject to reversal on writ of error.

After the plea is received the judge is required to hear evidence and to determine the degree of the offense and the proper punishment. Where the offense charged includes lower degrees of crime, the judge may, on the recommendation of the state's attorney, accept a plea of guilty to a lower offense. The judge then sets the case for trial. If the accused is unable to employ counsel, the court appoints counsel to defend him.

If the defendant in a criminal case applies for a change of venue, the judge rules on the application. The judge also has wide discretion in granting continuances.

In trials by jury, although the examination of prospective jurymen is usually conducted by counsel, it may be done by the judge. When the eligibility of a juror is challenged, the judge rules whether the grounds of the challenge are true in fact and valid in point of law.

During the trial the judge rules on objections to the admissibility of evidence and to the competency of witnesses, and upon any claims of privilege by witness. If the evidence is sufficient to warrant a conviction, the judge must submit the question of the defendant's guilt to the jury under proper instructions.

In case of a verdict of guilty, the defendant may move for a new trial. The judge rules on this motion. The same is true if the defendant seeks to arrest the judgment.

Where pleas of guilty are entered or where jury trial is waived, the entire responsibility of the proceeding rests upon the judge.

Negative duties of a judge in Illinois.—The respective rôles of judge and jury in Illinois radically differ from those of other jurisdictions, and place upon the judge some duties that are negative in character. In many states and in the federal courts the judge, in charging the jury, may sum up the evidence to the jury and comment on it and express his opinion on the facts, provided that he informs the jury that his views are not binding on them. In Illinois criminal procedure, however, the judge may not verbally comment upon the evidence in charging the jury in a criminal proceeding. He may instruct the jury only in writing. This circumstance minimizes the rôle of the judge in the proceedings and places

him under the special precaution of observing an impartial attitude at all stages of the trial.⁴

Thus, while the judge has the right to ask questions of witnesses or call other witnesses to the stand in order to ascertain the facts and elicit the truth concerning the question at issue, he must do it in a fair and impartial manner, without showing any bias for or prejudice against either party.⁵

The practical importance of the judge's conduct during a trial may be inferred from the fact that in nearly one-half of the decisions in criminal cases set aside by the Illinois Supreme Court during the period from 1917 to 1927, the reversals were attributable directly to the conduct of the trial judges. Of 394 such cases reversed, 81 were for errors in giving or refusing instructions, 80 for errors in the admission or exclusion of evidence, and 35 for misconduct of the court.⁶

In theory, the judge is supposed to sit upon the Bench and be indifferent to the proceedings. But actually, as one writer⁷ points out, he plays a more direct and influential part. The judge, in effect, is the one who keeps the proceedings from lagging. Juries need to be kept in order. Many jurors take their cue from the court—laughing when he laughs, frowning when he frowns, and lapsing into inattention too if he seems bored. However much the judge may admonish to the contrary, the jury almost instinctively tries to determine from his manner and charge what is his impression of the case.⁸

In the main the foregoing passages describe the criminal tribunals and the courts of original jurisdiction. Of even greater importance from the standpoint of judicial responsibility, however, are the higher courts, which have original jurisdiction in matters involving civil law and equity proceedings, in addition to their appellate jurisdiction. These courts may be called upon to decide

⁴In an opinion handed down October 25, 1934 (See the *Chicago Tribune* of that date) the Illinois Supreme Court remanded a case for retrial on the ground that a judge may instruct the jury only in writing. To make it a test case of the judge's right to comment upon the evidence verbally, Judge Joseph David had departed from precedent. The Supreme Court, however, reversed the decision of guilty upon appeal.

⁵Illinois Supreme Court in *People v. Filipiak* (1926), 322 Ill. 546.

⁶*Illinois Crime Survey*, p. 117. Among the items of misconduct noted were: uttering prejudicial remarks; unreasonably limiting counsel's time for argument; and being temporarily absent from the courtroom, although remaining within hearing distance, while counsel for the state made an improper reference to another case similar to the one at issue (see *ibid.*, pp. 168-70).

⁷Arthur Train, a former assistant district attorney in New York County, in *The Prisoner at the Bar* (New York: C. Scribner's Sons, 1923), p. 182.

⁸In the case of *People v. Schultz* (1921), 300 Ill. 601, the Illinois Supreme Court commented on this point as follows: "Jurors watch the trial judge closely and generally place great reliance on what he says or does. They are quick to perceive any leaning of the court."

questions of public policy, or issues affecting the economic interests of a large section of the community.

These courts administer, also, what one writer has called "the ordeal of the constitution." Thus in deciding questions involving social, economic, and political policies, especially at a time when every judicial decision is scrutinized and challenged, the courts have a responsibility of the greatest gravity and one difficult to fulfill.

Code of judicial conduct.—In addition to the specific duties and responsibilities of a judge on the Bench, tradition has erected numerous precepts of conduct desirable in a judge whether on or off the Bench. These were formalized in the canons of judicial ethics adopted by the American Bar Association in 1924^o as "a proper guide and reminder for judges and as indicating what the people have a right to expect from them." Pertinent excerpts from the canons follow:

Canons of judicial ethics

The judge should be alert in his rulings to make the court useful to litigants and to the community.

It is the duty of all judges to support the constitutions and fearlessly observe and apply fundamental limitations and guarantees.

A judge's official conduct should be free from impropriety; his personal behavior should be beyond reproach.

He should use his opportunities to criticize and correct unprofessional conduct of attorneys brought to his attention.

He should not permit his appointments to be controlled by others than himself.

He should not act in a controversy where a near relative is a party.

He should not be swayed by partisan demands or public clamor.

He may properly intervene in a trial of a case to expedite the proceedings.

He should discourage ex parte hearings of applications for receivership or injunctions; nor permit private interviews, arguments, or communications designed to influence his judicial action.

A judge should adopt the usual method of doing justice and avoid personal idiosyncrasies.

He should not accept inconsistent duties and should avoid making personal investments in enterprises which are apt to be involved in litigation.

A judge should avoid making political speeches, making or soliciting payment of assessments to party funds, public indorsements of candidates for political office, and participation in party conventions.

He should abstain from performing any judicial act in which his personal interests are involved.

A candidate for judicial office should do nothing that will create the impression that he would administer his office with bias or partiality.

He should not accept presents or favors from litigants or lawyers.

In social intercourse he should avoid action tending to arouse suspicion that his friendships may influence his judicial conduct.

^o*Gunthorp's Law Directory* (Chicago, 1932), pp. 205-9.

2. THE QUALIFICATIONS FOR JUDICIAL OFFICE

The second phase of the problem has been designated as the attempt to identify the human qualities and abilities needed to perform the various functions enumerated in the previous section. Simple reason indicates the minimum qualifications required, such as physical and mental health, the ability to read and write, or the capacity to reason and decide complicated problems. For a more or less comprehensive list of qualities desirable in a judge, we again turn to the writings of commentators upon this phase of judicial administration. Their ideas are summarized in Table XIV.

This alphabetical list of qualities is suggestive of the types of aptitudes deemed desirable in a judge. None of the authors cited was consciously attempting to catalogue these qualities completely—hence the gradations of meanings and the overlapping of qualities in the list. Considering the experience and contact with the judiciary of the various authors cited, the list offers a tentative basis for purposes of comparison and evaluation.

Official tests of eligibility in Illinois.—As a practical matter, the tests of judicial eligibility prescribed by the Illinois Constitution and statutes must be considered by the Chicago Bar Association. The legal minimum requirements contrast sharply with the ideal qualities just enumerated. In the case of judges of the higher courts, tests of residence and age are the only requirements for judicial office. In the case of the Municipal Court of Chicago, a statutory requirement of professional standing has been added to the constitutional provision regarding domicile and age.

The Constitution of 1870 prescribes that

no person shall be eligible to the office of judge of the circuit or any inferior court, or to membership in the "board of county commissioners," unless he shall be at least twenty-five years of age and a citizen of the United States, nor unless he shall have resided in this State five years next preceding his election and be a resident of the circuit, county, city, cities or incorporated town in which he shall be elected.¹⁰

The same qualification of residence is fixed for judges of the Supreme Court; their age requirement is increased from 25 to 30 years.¹¹ The courts have held that these requirements apply to all of the courts mentioned by title in the schedule of the constitution, namely, the Circuit, Superior, County, and Probate courts, and that, with eligibility thus definitely defined in advance, the legislature cannot alter or add to the requirements.¹²

Although it is an "inferior court," the Municipal Court of Chicago, having been established by statute, is not subject to this limitation. For this court the eligibility fixed is the same as that

¹⁰Art. VI, sec. 17.

¹¹Art. VI, sec. 3.

¹²*People v. McCormick* (1914), 261 Ill. 420.

TABLE XIV
QUALITIES DESIRABLE IN A JUDGE

Quality	Specified by Author Number (See Key Below)
Age enough to have had real experience as a man.....	12
Attentiveness, patience.....	6, 11
Commonsense, possession of.....	8, 11
Considerate of jurors and witnesses.....	1
Courage.....	3, 11
Courtesy to counsel.....	1, 9
Diligence in obtaining facts.....	1
Discrimination.....	11
Experience.....	3
Experience in the law.....	6
Fairness; fair-mindedness.....	8, 9
Honesty.....	11
Impartiality.....	1, 11
Independence; possessing the will to declare law without fear or favor.....	3, 9
Industry.....	1, 12
Initiative, inventiveness, resourcefulness.....	7, 8
Insight, penetrating.....	7
Integrity and character above suspicion.....	2, 3, 10
Judge of knowledge and scientific expertness.....	8
Judgment, balanced.....	7
Judicial temperament.....	2
Knowledge, aware of a rich variety of; conversant with history, economics, sociology.....	4, 8
Knowledge of technical law; of law.....	8, 9
Learning, legal.....	6, 2
Logic, legal.....	7
Morals, exemplary.....	6
Patience.....	12
Promptness.....	1
Public spirited.....	3
Self-control.....	9
Sensitiveness.....	8
Spirit.....	8
Studios of principles of law.....	1
Sympathy.....	8
Taste	
sense of judicial propriety;	
will to declare law without notoriety seeking or bombast.....	8, 9, 11
Temperateness.....	1
Tolerance.....	12

KEY

1. American Bar Association, Code of Judicial Ethics.
2. E. M. Ashcraft, President, Chicago Bar Association, *Chicago Tribune*, May 3, 1902.
3. William C. Boyden, President, Chicago Bar Association, *Record*, June, 1926.
4. A. A. Bruce, *op. cit.*, p. 124.
5. Thomas Hoyne, President, Chicago Bar Association, *Annual Meeting*, June 26, 1909.
6. Thomas Jefferson, *Letters and Papers*, Federal Edition, II, 218.
7. Charles E. Merriam, *op. cit.*, pp. 145-46.
8. Raymond Moley, "When Politics Seasons Justice," *Yale Review*, XXI, No. 3, 448-65.
9. William P. Sidley, President, Chicago Bar Association, in *Union League Bulletin*, VII, No. 12.
10. John H. Stevens, President, Illinois State Bar Association, *Proceedings*, 1902, Part II, p. 11.
11. Arthur Train, *op. cit.*, pp. 198, 204.
12. Newton D. Baker, *University of Cincinnati Law Review*, VII, No. 4, 487.

of the higher courts in respect to citizenship and domicile. But candidates for the Municipal Court must be at least thirty-two years of age and have engaged in the active practice of the law or as a judge for at least eight years preceding the election.¹³ Thus, an inferior court requires higher qualifications for its judges than the higher courts in the same territory!

3. DESIRABLE JUDICIAL QUALITIES COMPARED WITH THE CHICAGO BAR ASSOCIATION'S INVESTIGATION OF CANDIDATES

In Table XV these numerous qualifications deemed essential or desirable in a judge are listed in the first column, and in the second is stated the question or other form of consideration with which the Bar Association covers the particular trait, if at all, in its routine investigation of each candidate.

From its files and from the personal experience of the members of the Committee on Candidates, the Association may receive a considerable amount of information which can effectively supplement that obtained from the candidates and from its own members. The committee can ascertain, for example, the record of the various incumbents on cases appealed from their courts and the number of such cases sustained or reversed. A judge's "learning" and erudition, as shown in his decisions or written opinions, can be appraised. His enterprise as a magistrate, his resourcefulness in cutting judicial red tape and in speeding up the wheels of justice, may also be taken into account.

As a matter of fact, the committee hears accounts of unethical conduct both on and off the Bench and allegations regarding disqualifying private connections, "deals," and activities. Data of the latter type are either in the zone of "shady" activity which comes in the category of "unfortunate but unforbidden," or of the frankly predatory or venal character which a candidate "can get away with" if he has strong political sponsorship. Information of this type is likely to be reflected in the committee's characterization and estimate of the candidate, although the facts, favorable or unfavorable, may not appear in its brief report that is published and circulated among its members for their information in the Bar primary.

Information of this type usually classifies as "confidential" and does not appear on the public records. It probably covers some of the headings which seem to receive inadequate consideration in the

¹³Chap. XXXVII, p. 365 (Smith-Hurd). In 1931 (L. [1931], 420), and approved by referendum in November, 1932. The earlier requirements of thirty years of age and five years' practice were raised as indicated. The act also prescribed that no judge of the Municipal Court shall engage in the practice of law, or act as a member of any political party committee concerned with the nomination of candidates for elective office.

TABLE XV
COMPARISON OF DESIRABLE QUALITIES IN A JUDGE AND THE CHICAGO
BAR ASSOCIATION'S TESTS OF JUDICIAL FITNESS

Quality or Trait	Bar Association's Inquiry*
I. Illinois Legal Requirements for Candidacy	
Age.....	Name, age, residence, birthplace.
Citizenship.....	If born in foreign country, at what age did you come to the United States and when and where were you naturalized?
Residence, period of in Chicago...	How long have you practiced law in Chicago?
II. Learning and Ability	
Ability in general.....	Candidate is asked to give names and addresses of references as to his character and ability, and to state how long he has known each reference. Does he possess legal ability? Has he the capacity to be a good judge?
Learning—broad learning.....	Where did you secure your pre-legal education? Give number of years spent in each school. Did you attend college? If so, state what college and when, specifying dates. What degrees, if any have you received?
Legal learning.....	What degrees in law, if any, have you received?
Experience in the law; judicial training	When and where were you admitted to the Bar and how long have you practiced law in Chicago? Are you now, or have you been, actively engaged in the practice of the law? If so, please give your office location and the names of your associates. Please give general character of your practice. What judicial office have you held and for what period? Have you ever been engaged in any occupation, business, or profession, other than the law? If so, when and where? Have you ever been a candidate for public office? If so, state what offices, whether elected, and how long you occupied the office. To what public offices have you been appointed, and how long did you serve?
Commonsense, discrimination, balanced judgment, judicial temperament, self-control, taste, studiousness; sensitiveness, resourcefulness, initiative, inventiveness	Has he a judicial temperament? Has he the capacity to be a good judge?

TABLE XV—*Continued*

Quality or Trait	Bar Association's Inquiry*
III. Character and Conduct	
Exemplary morals; integrity; honesty, upright character; above suspicion. Temperateness.	Is his reputation at the Bar good? Statements from character references. Have you ever been sued by a client? (State particulars.) Have you confidence in his judicial integrity?
Courage, independence, backbone, spirit, strong, fearless, will to declare law without fear or favor	What is his reputation at the Bar?
Impartiality, fairness, fair-mindedness. Insight, legal logic. Public spirit	Is he fair-minded?
Executive ability; diligence, industry	Is he diligent in the despatch of business? Has he the capacity to be a good judge?
Courtesy, patience, attention, time, trouble; considerate of jurors; sympathy	Is he patient and courteous?
Dignity, taste, sense of propriety, without notoriety-seeking or bombast	Have you ever been a party to or otherwise personally involved in any legal proceedings? If so, state facts fully. Is his reputation at the Bar good?
Punctuality	Does he open court promptly?

*The Los Angeles Bar Association makes the following inquiries: Does he open court promptly? Does he remain on the Bench until five o'clock if a case is in his court in the course of trial? Is he diligent in the dispatch of business? Is he disposed to work hard? Is he courteous? Is he attentive and fair-minded? Does he possess adequate legal ability? Has he executive capacity? Is he able to rule and decide promptly? Does he allow political or personal considerations to interfere with the proper discharge of his judicial duties? Does he indulge in extra-judicial activities not proper for a judge, or which interfere with the performance of his judicial duties, or which bring the judicial office into disrepute? (*Journal American Judicature Society*, XVI, 8.)

The six-point analysis of judicial standing adopted by the Cincinnati conference on judicial selection and tenure (*University of Cincinnati Law Review*, VIII, No. 8, 496 ff.), is concise and to the point: (1) subjection to political and personal influence; (2) want of legal ability; (3) lack of industry; (4) arrogance and intolerance; (5) timidity; (6) want of moral character.

foregoing schedule. While the Association's investigation of candidates generally appears to cover the principal points, the writer has been told of particular instances when a more searching inquiry at the time would have disclosed individual unfitness and would have avoided specific indorsements which later conduct proved to be distressing errors. To those "in the know" such instances tend greatly to discredit the thoroughness of the Association's procedure.

The Bar Association's schedule of information omits any reference to the political party activity of candidates. Nor is mention

of this usually made in the printed report issued by the Committee on Candidates. The omission may be made deliberately on the theory that through the ignoring of this consideration, the reports and decisions will tend to be less partisan. From its general information about candidates, the committee knows of the candidate's political activity and undoubtedly the matter is considered at its sessions.

The dominant rôle of the major parties in every political situation suggests the desirability of establishing the degree of political party activity on the part of the candidate as another test of fitness. Whatever might be the Bar's attitude concerning the merit of such activity as a qualification or disqualification for a judge, the information could be presented and the reader be permitted to draw his own conclusions.¹⁴

Several questions in the Los Angeles schedule specifically cover a number of points which are only implied in the Chicago list. For example, such questions as—"Is he disposed to work hard?" "Is he able to rule and decide promptly?" "Does he allow political or personal considerations to interfere with the proper discharge of his judicial duties?" "Does he indulge in extra-judicial activities not proper for a judge?"—deal directly with vital points of judicial capacity and conduct.

The Chicago schedule seems inadequate on the points of resourcefulness, judicial temperament, impartiality, insight, and public spirit—all of which are basically desirable qualities in a good judge.

Attention may be called to the fact that the inquiries contain no clues to the liberal or conservative character of the candidates' views on broad questions of public policy.¹⁵ The Association is thus able to maintain a more impartial attitude than would be possible if it attempted to open a Pandora's box by censoring candidates' views in addition to appraising their capacities.¹⁶

On the whole, it can be said that the Chicago schedule fairly well covers the essential points of judicial capacity.

"Under the elective system, especially where nominations are made by primaries, 'the position of judge,' says Judge Bruce (*The American Judge* [New York: Macmillan Co., 1924]) 'is pre-eminently political, and he is ever at the mercy of the politicians and of the powers behind the throne, whether those powers be popular, corporate or democratic in the broad and high sense of the term.' Raymond Moley (*Yale Review*, XXI, 455) points out the relation between the 'political mind' in a judge and how it operates in striving for 'practical' decisions; also the advantages it has from the standpoint of social justice. 'The politically-minded judge will become aware of the stirring of public opinion destined to determine the subsequent course of law.' Also see chap. XXIII herein.

¹⁴See chap. XV, p. 152, however, for the issue presented by the Socialist party in 1917.

¹⁶Commenting upon the late Justice Holmes' observation that no legislature had enacted Herbert Spencer's social statics into a statute, Newton D. Baker says "if no legislature has done it, certainly no court ought to do it!"

4. DEVISING "YARDSTICKS" FOR MEASURING JUDICIAL QUALITIES

Before the foregoing qualities can be applied to individual candidates, they must be expressed in units of measurement which will permit the comparison of candidates with themselves at different times or with each other at the same time.

Learning, for example, may be expressed in terms of the amount of formal schooling received. A grammar-school graduate's rating would be eight years; the high-school grade, twelve years; the college graduate, sixteen years; or the holder of a doctor's degree, nineteen years. This academic ladder becomes a scale of measurement or a yardstick which is equally applicable to all candidates, since all have had some degree of formal schooling.

In the same way an attempt was made to construct "yardsticks" for as many as possible of the specific qualities outlined in step three. In doing this, several difficulties were encountered, some of them being obviously insurmountable. The chief limitation was the amount and number of sources of information available concerning the candidates. The chief source was the published reports of the Association. Supplementary information was obtained from a few other sources. The character of the information was such that it was practically impossible to obtain it for elections prior to 1906.

Attention may be called to the many gaps¹⁷ which appear between the listing of desirable qualities and the "yardsticks" of such qualities as presented in Table XVI. In a sense, many of the qualities—temperament, integrity, courage, impartiality, ability, dignity, etc.—are somewhat reflected in the estimates of the Commit-

¹⁷In the writer's original schedule of inquiry, 21 characteristics or seemingly measurable factors of judicial fitness were tabulated. But only those indexes were used which permitted uniform comparison for a substantial proportion of the candidates studied. In a study of Supreme Court judges, Mott and associates (*op. cit.*, pp. 143-55) list sixteen measurable characteristics. In addition to yardsticks 1 to 10, or their equivalents, in Table XVI, Mott listed the following: (a) service on lower courts (the study related to Supreme Court judges); (b) number of fraternal orders to which judge belonged; (c) Martindale's rating of legal ability; (d) size of town in which the judge practiced; (e) size of town in which the judge was born; (f) party offices held; (g) public legal experience; (h) public administrative experience; (i) legislative experience; (j) honorary degrees secured.

The writer attempted to employ items *b*, *c*, *f*, *g*, *h*, and *i* of this list. Some of this information was not available for Chicago candidates. Martindale's directory, for example, omits its ratings on Chicago lawyers and the publishers of the volume declined the writer's offer to pay for a special series of ratings on judicial candidates.

Other available information was tabulated but was not used because it appeared to have little relation to judicial fitness. Data of this type were: marital status of candidate; number of children; distance of birthplace from Chicago; candidate's non-legal experience, etc.

TABLE XVI
 "YARDSTICKS" OF QUALITIES OF JUDICIAL CANDIDATES

Quality	"Yardstick"
Legal requirements:	
Age.....	1. The age of the candidate, expressed in years, at time of election.
Citizenship.....	Was the candidate a citizen?
Residence, period of in Chicago.....	2. The number of years candidate resided in Chicago.
Learning and ability:	
Learning.....	3. The number of years candidate had attended school or the last grade reached by candidate in school.
Legal education.....	4. The quality of professional education in terms of law schools attended by candidates, classified (on basis of the number and extent of the courses required for a degree) by A. Z. Reed in <i>Training for the Public Profession of the Law</i> .
Legal experience.....	5. The number of years candidate had been in active legal practice.
	6. The number of major professional associations of which the candidate was a member.
Public experience.....	7. The number of elective or appointive public offices held prior to the election.
	8. The number of times the candidate had campaigned for public office, counting both primaries and elections.
Judicial experience.....	9. The number of years the candidate had served in the office to which he sought re-election.
Character, conduct and general fitness.....	10. Estimates of the Committee on Candidates concerning the candidates' general fitness for office.
Political activity.....	11. An opinion rating was obtained from five different well-informed persons as to the amount of political party activity engaged in by the candidates. This ranged from the normal activities of citizenship through five degrees of activity to the leadership of a major faction or group. This index was obtained on Circuit and Superior Court judges only.
Local prestige.....	12. The amount of space accorded the candidate in <i>Who's Who in Chicago</i> . This information was available on Circuit and Superior Court judges only.

tee on Candidates (number 11). The difficulty of expressing varying amounts of these qualities in standard terms accounts for the failure thus far to devise satisfactory yardsticks for these items.

5. "YARDSTICKS" EXPRESSING ESTIMATES OF THE BAR ASSOCIATION AND OF THE VOTERS REGARDING THE CANDIDATES' QUALIFICATIONS FOR THE BENCH

The votes of the lawyers in the Bar primaries and of the electorate in the primaries and judicial elections establish orders of merit for the respective candidates in the different contests. These are "yardsticks" of the most basic type: the one determines whether or not the candidate is to be recommended by the Association, and the other, whether the candidate is to be a judge.

Since we desired to compare the results under different elections, it was necessary to treat the information statistically to iron out as far as possible such variations as the following: the varying percentages of voters participating in different elections, and the increases in the eligible electorate.

To render the votes in the Bar primary and the votes in the different elections comparable, the original figures for each series of information were converted into "standard measures."¹⁸

6. COMPARISON OF THE YARDSTICK RANKINGS OF THE CANDIDATES

From the application of the yardsticks discussed in steps four and five, there were obtained a series of classifications which grouped all of the candidates studied according to the amounts of the desirable qualities or characteristics they possessed. There were fourteen such classifications, one for each of the twelve measurable characteristics listed in step four, and one for each of the two rankings under step five. In each of these fourteen groupings, it was as if all of the candidates had been arranged in order of their age, schooling, or length of experience, etc. In age, for example, the youngest were assigned to the lower end of the scale, and the oldest to the opposite end, with those in between ranged according to their years. This hypothetical line-up was repeated for each measurable factor.

¹⁸The following procedure, devised by Truman Lee Kelley (*Statistical Method* [New York: Macmillan Co., 1924], pp. 114-16) was employed. The method considers that (a) the mean scores of series of data measuring the same function are comparable, (b) that "standard deviations" of such series are comparable and (c) that the same proportion as between "standard deviations" holds for all equivalent deviations from the mean. The equation for the standard measure becomes: Z (Standard Measure) =

$$\frac{X \text{ (Individual Figure in series)} - M \text{ (Mean of the series)}}{\sigma \text{ (Standard deviation of the series)}}$$

"For the usual distributions found in the social sciences it seems reasonable to expect," says Kelley, "that if the means of the distributions are set equal, and if points one standard deviation away from the respective means be placed together, a better approximation to complete equivalence throughout the entire scales will be obtained than if the means and zero points are equated and other values taken in proportion."

The next problem was to determine how these different classifications compared in terms of the Bar Association's final estimate of judicial ability (i.e., its recommendations or the Bar primary rankings) and, similarly, in terms of the electorate's opinions of the candidates as expressed in their votes. Our desire was to ascertain, if possible, what relationship existed between the recommendations of the Association and the tendencies of the members to favor candidates with certain characteristics. For example, the results of the Bar primaries automatically rank the candidates in a definite order of preference or merit. The same candidates are also ranked according to age, schooling, experience, etc. The question, then, is which characteristics do the members of the Association favor? Do they tend to vote for the older candidates, for those with more schooling and with longer experience, etc., or vice versa?

The information obtained for each of the characteristics thus measured made it possible to mark the position of a candidate in each of the classifications, and also to compare his position in the series with that of every other candidate in the group. From these listings it was possible to analyze the relationship between the several characteristics represented. The analysis was made by comparing two series at a time. For example, if the candidates scored high in age and also ranked high in the vote of the Bar, and this tendency was consistently followed in all cases, we would logically conclude that the lawyers regarded age as a desirable characteristic in judges. If age were then compared with the public vote and some men standing high in age ranked low in vote, while others standing high in age also stood high in vote, we would naturally conclude that the public places little emphasis on age as a factor of fitness.

Similarly, paired comparisons were made with each of the characteristics of fitness and with each of the two estimates of aptitude. Each set of comparisons would furnish the basis for drawing conclusions regarding the relative importance assigned by the Bar and the public to a given characteristic.

The comparisons could have been traced satisfactorily by eye if only a few candidates were involved. But as the number of cases increases, the relationships become so complex that without mechanical aid hopeless confusion would result. To aid in the analysis of such relationships, the statistical device of "correlation" was employed, whereby the average relationship between any two series of data containing any number of paired measures is expressed as

a coefficient ("r") or index on a scale of values. This figure is known as the "coefficient of correlation."¹⁹

Possible coefficients range from +1.00, which is perfect agreement between all of the measures, to -1.00, in which all of the cases are the exact opposites. A coefficient of 0 represents no consistent agreement whatsoever. The sign or direction and size of the coefficient are thus important considerations in interpreting the relationships between the different characteristics and the estimates of judicial ability.

7. THE RESULTS OF THE ANALYSES

The important question, of course, is: What evidence did the analyses disclose concerning the reliability or unreliability of the Bar Association's recommendations?

In recognition of the fundamental differences between the different courts and the different times at which judicial elections are held in Chicago and Cook County, three groups of data were analyzed separately, as follows:

Group A. *Republican primaries* in April for nominating candidates for the associate judgeships of the Municipal Court of Chicago. Data for seven contests (occurring from 1918 to 1930, inclusive, and involving 197 candidacies) are contained in these computations. These contests were selected because complete schedules of information were available for them, whereas for four earlier primaries (1910-16, inclusive) some of the desired items were lacking. The Republican primaries were selected because, in general, they had been marked by factional disputes for power, and therefore represented a more typical situation than where a single group had dominated the situation.

Group B. *The regular election of associate judges of the Municipal Court of Chicago.* The data analyzed comprised the three group contests in 1906, the regular contest in 1908, and the seven regular elections from 1918 to 1930, inclusive. There was a total of eleven contests involving 250 candidacies. Data for contests in the years 1910-16 were omitted because several essential items of information were missing. Only groups of candidates for full-term offices were included. Contests for single offices and special elections to fill vacancies were omitted.

¹⁹The coefficients of correlation in this study were computed by the following formula:

$$r = \frac{(N) (\sum XY) - (\sum X) (\sum Y)}{\sqrt{(N) (\sum X^2) - (\sum X)^2} \sqrt{N \cdot \sum Y^2 - (\sum Y)^2}}$$

in which N is the number of paired measures; X is the modified value of one measure; and Y is the modified value of the opposite measure, when the original values have been grouped into not more than twenty classes.

The Toops Correlation Chart was also used. See Herbert A. Toops, *Journal of Experimental Psychology*, IV, No. 6 (December, 1921), 434-46.

All of these elections were straight bipartisan contests held at the same time the county, state, and national offices were being filled. This circumstance had the effect of introducing considerations which made it desirable to analyze these contests separately.

Group C. The *regular elections* for the *Circuit Court* in 1915 and 1927 and for the *Superior Court* in 1910, 1911, 1916, 1923, 1928, and 1929. A total of eight regular contests and 201 individual candidacies were thus included. The Circuit Court elections in 1909 and 1921 were omitted because no Bar poll was taken in those years. Single positions and special contests were also omitted. The data for the two courts were merged because the conditions of each contest and the duties of the two positions were sufficiently similar to justify handling them together.

The three major groups of judicial contents thus analyzed covered a period of twenty-five years and included a preponderant proportion of all judicial candidacies in Chicago during the period. It was considered that so large a body of data would give an adequate basis for conclusions concerning the reliability of the Bar Association's recommendations.

Factors included in the analyses.—The analyses of relationship described in step six were computed for each of the characteristics or factors mentioned in steps four and five and on all of these for each of the three sets of data referred to above. The coefficients indicating these relationships are presented in Table XVII.

Interpretation of coefficients of correlation.—The coefficients of correlation, it should be emphasized, are regarded here merely as measures of *association* between two sets of data.²⁰ No attempt was made to prove a causal relation between any of the factors suggested and the results in the Bar primary or the outcome of the public polls. The purpose was to select some of the measurable characteristics that receive consideration in the Association's appraisal process and then to see what degree of association these various factors showed with the final result. In this way it was hoped to approximate, or at least to throw some light on, the comparative emphasis given by the members of the Bar and of the electorate to these various considerations.

These coefficients, we believe, may be regarded as trustworthy "measures of association." They are based, not on a few random samples, but upon all of the available data covering all of the candidates for particular judicial offices over a considerable period of time. This period is sufficiently long to be representative both of the types of candidates that sought office and of the reactions of the Bar and the electorate to those candidacies.

²⁰See K. J. Holzinger, *Statistical Methods in Education* (Boston: Ginn & Co., 1928), p. 164, and Mordecai Ezekiel, *Methods of Correlation Analysis* (New York: John Wiley & Sons, Inc., 1930), p. 130.

TABLE XVII

CORRELATION RATIOS BETWEEN ESTIMATES OF FITNESS BY THE BAR
AND BY THE ELECTORATE AND SPECIFIED CHARACTERISTICS
OF JUDICIAL CANDIDATES COMPARED FOR THREE
TYPES OF JUDICIAL ELECTIONS

Characteristic or Factor (1)	A. Republican Primary Municipal Court 7 Contests* 197 Candidacies		B. Municipal Court Nov. Elections 11 Contests† 250 Candidacies		C. Circuit and Superior Court Regular Elections 8 Contests‡ 201 Candidacies	
	Bar Primary (2)	Public Primary (3)	Bar Primary (4)	Public Election (5)	Bar Primary (6)	Public Election (7)
1. Age.....	.353	.099	.293	.008	.472	.415
2. Length of residence in Chicago	.184	.176	.044	—	.215	.216
3. Education.....	.236	.174	.172	.099	.256	.188
4. Legal education.....	.325	.103	.148	.034	.228	.037
5. Length of legal experience...	.373	.213	.441	.076	.463	.347
6. Membership in major profes- sional associations.....	.436	.238	.343	.217	.389	.341
7. Public offices held prior to election.....	.234	.231	.148	.077	.379	.227
8. Number of times candidate had campaigned for public office.....	.324	.319	.132	.186	.431	.406
9. Length of service on Bench...	.423	.428	.329	.248	.561	.542
10. Estimate of the Association's Committee on Candidates...	.805	.313	.794	.220	.800§	.527§
11. Political activity of candidates	.....	.....	.....	.....	.285	.002
12. Space in <i>Who's Who</i>.....	.....	.....	.....	.....	.413	.278
13. Corresponding public election	.509	.....	.378	.....	.629	.....
Corresponding percentage of Bar- endorsed candidates nominated or elected.....	60 per cent		60 per cent		81 per cent	

*Primary elections from 1918 to 1930, inclusive.

†Municipal Court contests of 1906 (three series), 1908, 1918, 1920, 1922, 1924, 1926, 1928, and 1930.

‡Circuit Court contests of 1915 and 1927 and Superior Court contests of 1910, 1911, 1916, 1923, 1929.

§Data apply to 79 candidates in the Superior Court elections of 1923 and 1929.

The amount of correlation or association in any series of paired measures, it will be recalled, is shown by the place its coefficient falls on the correlation scale. A zero coefficient would show no relation; a plus figure would indicate a positive relation; and a minus figure, a negative or inverse association between any two series of data. There is no standard method for interpreting when a coefficient is "low" or "high." One writer,²¹ however, has issued an arbitrary scale which will serve to indicate when these relationships become meaningful. Thus the amount of correlation is regarded as "negligible" when the coefficient is below .15-.20; "present but low" between .15 or .20-.35 to .40; "marked" between .35 or .40-.50 or .60; and "high" when it is above .60 or .70.

²¹H. O. Rugg, *Statistical Methods in Education* (Boston: Houghton Mifflin Co., 1917), p. 256.

WHAT THE COMPARISONS SHOWED

On this basis, the coefficients in Table XVII indicate that in appraising a candidate for the Municipal Court, the average lawyer tends to be influenced by factors of age, legal education, length of experience, membership in professional associations, number of candidacies for public office, and length of service on the Bench. However, the length of time a candidate has resided in Chicago, the extent of his education, and the number of public offices he has held, seem subordinated.

The electorate, on the other hand, in the case of this lower court, appears to emphasize factors of popularity more than factors of personal qualification. Age, education, and legal education appear to receive less consideration than such facts as the number of times the candidate has sought office and the length of his judicial service.

In the case of Circuit and Superior Court candidacies the same general tendencies, with a few exceptions, appear to be maintained on a higher level of association. The age of the candidates, for example, appears to have been given greater weight in these courts than in the lower tribunal.

Our primary purpose in Table XVII, however, is to show the relative emphasis placed by the Bar and by the electorate on the same factors. Our assumption was that inasmuch as the lawyers have definite information before them when they vote in their Bar primary, higher degrees of association for the various characteristics would be expected from them than from the electorate with its limited information about the candidates and its limited facilities for getting at the facts. To bring out these points, comparisons should be made in the table between the paired columns under each of the three sets of data.

Before examining these indexes in detail, we should notice what seem to be characteristic levels for each of the three types of election contests. These levels appear to be indicated by two factors: item 10, or the relation between the estimate of the Bar Committee and the public vote; also item 13, the correlation of the Bar primary votes and the public votes. Thus, in item 10, the Municipal Court election (Group B) scores .220, the Municipal Court Republican primary (Group A) .313, and the Circuit and Superior Court elections (Group C) .527. Item 13 shows also in the same order, .378, .509, and .629, respectively.

These figures point to a considerable variation in the "atmosphere" surrounding these three contests. It seems logical to conclude that the varying degrees of distraction will have an effect upon the consideration which the electorate will be able to give to the comparative fitness of judicial candidates. From mere observa-

tion of conditions surrounding the different judicial elections, the contrast between them is evident. At one extreme are the contests for the Municipal Court, which become a mere incident to the more colorful struggles for the more powerful offices of president, United States senator, governor, or state's attorney. At the other extreme are the contests for the Circuit and Superior courts, which are usually the dominant issue of the separate elections at which they occur. This circumstance, and the prestige of the higher tribunal, result in more serious consideration being given the matter of candidacies both by Bar, political leaders, and electorate. While the primary elections for the Municipal Court are fought out along partisan lines, the element of contest is between factions or individual candidates, and not between the major party organizations. Except in a factional struggle for some politically powerful office like the county judgeship, the primaries usually lack the rancor of competition and thus seemingly permit a more careful consideration of judicial fitness.

Now, let us compare the paired coefficients for the respective characteristics under each of the three types of contest. Under our assumption, the Bar, on account of its special information, should show more discrimination in its Bar primary vote than should the general electorate. This greater discrimination should appear as higher coefficients of correlation in the important characteristics of judicial fitness. The significance of the paired coefficients will appear in the amount of difference between them. These differences must then be interpreted in terms of the desirability of the particular characteristic in respect to judicial fitness.

For the purpose of facilitating an evaluation of the significance between the paired coefficients in Table XVII, the coefficients have been further analyzed in Table XVIII. The significance of the differentials between the paired coefficients is expressed in terms of the "probable errors" of the coefficients representing the correlation between the Bar primary poll and the specified characteristics. When the ratio between the "probable error" and the amount of the differential is three or four times the magnitude of the "probable error," the difference between the paired coefficients is considered to be statistically significant.²²

²²The "probable error" is a device for predicting the margins above and below the values actually obtained in the original data in which new or additional data would probably fall. In the words of L. L. Thurstone (*The Fundamentals of Statistics* [New York: Macmillan Co., 1927], p. 174), "The probable error tells us something regarding the reliability of our estimates of a total from a relatively small sample by which we try to prove something regarding the total. But the probable error tells us only about the expected variations that are due to mere chance." In the present study the data are not small samples, but include *all* of the available information on *all* of the candidates in several election contests. The device is employed here as a convenient method of evaluating the results in standard terms.

TABLE XVIII

SIGNIFICANCE OF DIFFERENTIALS IN COEFFICIENTS OF CORRELATION
BETWEEN THE BAR PRIMARY AND THE PUBLIC POLL FOR
SPECIFIED CHARACTERISTICS OF JUDICIAL CANDI-
DATES PRESENTED IN TABLE XVII.

Characteristics and Series*	Differential between Coefficients of Bar Primary and Public Poll*	"Probable Error" of Bar Primary Co-efficient	Ratio of Differential to Actual P. E.	Is Differential Significant
1. Age				
A.....	.254	.043	5.9	Yes
B.....	.285	.039	7.3	Yes
C.....	.057	.038	1.5	No
2. Length of residence				
A.....	-.052	.048	1.1	No
B.....	.048	.043	1.1	No
C.....	-.001	.046	0.0	No
3. Education				
A.....	.062	.046	1.6	No
B.....	.073	.042	1.7	No
C.....	.068	.045	1.5	No
4. Legal education				
A.....	.222	.043	5.1	Yes
B.....	.114	.042	2.7	Fairly
C.....	.191	.046	4.2	Yes
5. Length of legal experience				
A.....	.160	.042	3.8	Yes
B.....	.365	.035	10.4	Yes
C.....	.116	.038	3.1	Yes
6. Membership in professional associations				
A.....	.198	.039	2.8	Fairly
B.....	.126	.038	3.3	Yes
C.....	.048	.041	1.2	No
7. Public offices held prior to election				
A.....	.003	.046	0.0	No
B.....	.071	.042	1.7	No
C.....	.152	.041	3.7	Yes
8. Number of candidacies for public office				
A.....	.005	.043	0.1	No
B.....	-.054	.042	1.3	No
C.....	.025	.039	0.6	No
9. Length of service on Bench				
A.....	-.005	.039	0.1	No
B.....	.081	.038	2.1	No
C.....	.019	.038	0.5	No

TABLE XVIII—Continued

SIGNIFICANCE OF DIFFERENTIALS IN COEFFICIENTS OF CORRELATION
BETWEEN THE BAR PRIMARY AND THE PUBLIC POLL FOR
SPECIFIED CHARACTERISTICS OF JUDICIAL CANDI-
DATES PRESENTED IN TABLE XVII

Characteristics and Series*	Differential between Coefficients of Bar Primary and Public Poll*	"Probable Error" of Bar Primary Co-efficient	Ratio of Differential to Actual P. E.	Is Differential Significant
10. Estimate of Bar Committee on Candidates				
A.....	.492	.017	28.9	Yes
B.....	.574	.016	35.9	Yes
C.....	.273	.028	9.7	Yes
11. Political activity of candidates				
C.....	.287†	.044	6.5	Yes
12. Space in <i>Who's Who in Chicago</i>				
C.....	.135	.040	3.4	Yes

*Election series analyzed (See Table XVII); Series A, Republican primary for associate judge of the Municipal Court; Series B, regular elections for associate judge of the Municipal Court; Series C, regular elections for judges of the Circuit and Superior courts.

†Although shown as a negative correlation in Table XVII, the desirable relation is positive and hence is shown here as such.

Each differential, which is three times the size of its "P. E.," or larger, and therefore is considered significant has a "Yes" listed opposite it in Table XVIII. On this basis we see that the following characteristics have significant differences:

Item	Characteristic
1	Age
4	Legal education
5	Length of legal experience
6	Membership in professional associations
11	Political activity
12	Space in <i>Who's Who</i> } for Circuit and Superior courts only

Characteristics having no noteworthy differences were these:

Item	Characteristic
2	Length of residence in Chicago
3	Education
7	Public offices held prior to election
8	Number of candidacies for public office prior to election
9	Length of service on Bench

Item 10, which compares the reaction of the Bar membership and of the electorate to the independent grading of the candidates by the Association's Committee on Candidates, shows an overwhelming trend in the direction of the Association. This, of course, is what we would normally expect. Indeed, we are amazed that the

coefficients are not higher. The fact is, however, that a coefficient of plus .8 is an exceedingly "high" degree of correlation.

If we analyze the two lists given above, we notice that the significant trends occur in the characteristics that are logically demanded in a good judge. Thus, age, the quality of legal education, the length of his experience, the tendency of the candidates to join the three major professional associations, the lack of political activity on the part of the candidate, and the candidates' local prestige as measured by the space in *Who's Who*, are characteristics emphasized by the Bar Association. Less emphasis was placed on the length of time the candidates had resided in Chicago and the amount of the candidates' schooling. Both of these characteristics, as indicated by this method, have a negligible or low degree of association with judicial fitness. Items 7, 8, and 9, on the other hand, showed higher degrees of association, but revealed insignificant differences between these two measures of judicial fitness.

The factor of the number of public offices held by the candidates showed a higher degree of association with the Bar poll than with the public vote. Especially was this true of the Circuit and Superior Court candidacies. This finding is probably accounted for by the widely observed fact of a larger public experience among candidates for these higher Benches.

Items 8 and 9 provide two noteworthy comparisons. In each there are insignificant differences, but both the Bar and the public tend to favor candidates who have campaigned many times and who have seen service in the courts to which they seek election. The tendency of incumbent judges to be re-elected was previously pointed out. The showing in these two items tends to substantiate that observation, since the two items complement each other to the extent that the candidates have been judicial incumbents.

SUMMARY

The ratings and recommendations of the Chicago Bar Association thus appear to be reliable on the following grounds:

1. The Association's consideration of the candidates is thoroughgoing. In fact, a comparison of qualifications deemed desirable in a judge with the Association's own schedule of inquiry revealed no major omissions. Some of the points could advantageously be more specifically treated.

2. The Bar Association has tended to show discrimination in favor of characteristics that are essential to judicial fitness in two ways: (*a*) by showing a greater degree of association in the characteristics that matter, than in those that appear to be immaterial; and (*b*) by registering significant differences in these same characteristics, as compared with the general electorate's reactions to the same factors.

CHAPTER XV

ARE THE RECOMMENDATIONS OF THE CHICAGO BAR ASSOCIATION IMPARTIAL?

In its campaigns for a better Bench the Chicago Bar Association's greatest asset is the confidence of the voters. Consequently, anything which builds up or impairs that confidence has an important bearing upon the Association's influence with the electorate.

In every contest there are numerous forces at work to undermine this confidence. Since the Association usually indorses only one-half or less of the candidates, those who were not recommended always explain why they were passed over. In most instances these explanations become a whispering campaign. Occasionally, however, when an omission involves a candidate with strong political or press support, it assumes the dignity of a public issue.¹ These attacks inevitably impair the Association's prestige with large groups of voters, for it seldom answers the allegations. It has preferred to "stand on the record."

Having considered the reliability of the Association's indorsements, we will now consider what precautions the Association has taken to render its findings impartial.

BASES OF INQUIRY

Inquiry concerning the Association's impartial attitude will be made on the following points:

1. What steps have been taken to minimize electioneering in the Bar primary?
2. Is the information impartially presented to the members of the Association?
3. Is the count of ballots accurate?
4. What assurance is there that the recommendations are not determined by personal bias or "influence" of individuals in the Committee on Candidates or among the Association's officers?
5. Does the Association tend to favor its own members?
6. Is the age of the candidate given too much weight, or too little?
7. To what extent is the party affiliation of the candidate a factor?
8. To what extent do the matters of residence, sex, religion, race, and nationality influence indorsements?

¹ For example, see chap. xxii for unfavorable reaction in 1930, when Judge John H. Lyle was denied indorsement.

In a perfect "system" we would expect all of the foregoing factors to be eliminated, except in so far as they were shown to have a bearing on judicial fitness. However, since the Association's work deals with criteria that have not yet been standardized and with processes in which human judgments predominate, we would expect to find that these factors have been minimized, rather than eliminated.

1. *Electioneering*.—A frequent criticism of the Bar primary is that it is too likely to be affected by personal and partisan considerations, rather than solely by the merit of the candidates. Press accounts of an early Bar primary, for example, reported the activity of several candidates and their friends in passing out cards to the lawyers as they entered the polling place. In a recent contest the writer heard a report that the head of a large public law office had ordered his assistants to mark their Bar primary ballots for the candidates of their faction. The statement has been made that in large law offices "the order goes out" for the primary ballots to be marked for certain candidates in whom the firm is interested.

Isolated instances such as these doubtless occur in every contest. The matters for concern are: What has the Association done to discourage such practices and what is the likelihood that such attempts will seriously alter the consensus of the Association?

As recently as 1911, electioneering, or "pledging" as it was called, was apparently considered part of the show by many Association members. In advance of the primary for the Superior Court election of November 7, 1911, the Association's Board of Managers passed a resolution requesting the members to refrain from pledging themselves to the support of any particular candidate until the result of the Bar primary could be known. This resolution was as follows:

WHEREAS, the purpose of a bar primary is to give the public an unbiased opinion of the bar as to qualifications of candidates for judicial office, in which every member of the Bar Association owes it as a duty to act in a judicial spirit, free from personal or partisan considerations, now, therefore, be it

RESOLVED by the board of managers of the Chicago Bar Association That the practice which has developed in connection with bar primaries of requesting members of this association to pledge their votes in favor of particular candidates for judicial office is not one comporting with the dignity of the office sought, and tends to prevent an unbiased expression of the membership as to the relative fitness of the several candidates; and be it further . . .

RESOLVED, That the members of this Association be requested not to pledge themselves in advance of the bar primary in favor of any particular candidate.²

A copy of the resolution and a pamphlet containing a picture and a biographical sketch of each candidate were mailed to each mem-

² *Chicago Legal News*, XLIV (September 30, 1911), 61.

ber. "As a consequence of these measures," observed Edgar B. Tolman in his report as president, "the members . . . were saved the annoyance and the candidates were saved the expense of the flood of circular letters that has heretofore seemed an inevitable accompaniment of every Bar primary."³ Two years later a similar resolution was again adopted and "met with general approval from our members and increased in the minds of the voters confidence in our choice," commented M. D. Follansbee, the Association's president.⁴

The open solicitation of votes appears to have been discouraged. During several years of close observation of the Bar primary in operation and of personal contact with numerous attorneys, no allegation of pledging has come to the writer's attention. Private solicitation doubtless continues in person, by telephone, or by the efforts of friends. So far as is known, however, the Association has never censured a candidate, or disciplined one of its members, for soliciting votes in the Bar primary.

Even if votes were solicited, it seems probable that only in an exceptional instance would the normal result of the poll be changed. Only enough candidates are indorsed to fill the offices at issue in the election, and all indorsed candidates are officially recommended irrespective of their ranking in the primary. A candidate might happen to assure himself a higher place by soliciting votes. Not even the Association executives, however, know what the key figures would be in such a plan, until after the ballots are tabulated and totaled. In the Circuit Court primary of 1933, for example, candidate No. 21 could have displaced candidate 20 (last man in the Bar list) had he had 7 more votes. Candidate 22 would have needed 45 votes and candidate 23 would have required 205 additional tallies. Numbers 21 and 22, both of whom were considered qualified, could probably have boosted their ratings by a little judicious telephoning. Candidate 23 would probably have upset the whole appletart, had he pursued similar methods.

The possibility of anyone's "beating" the Bar primary appears extremely unlikely from another standpoint. Knowing that in general the Association tends to follow the estimates of the Committee on Candidates, a candidate who had received a "thumbs-down" rating in the preliminary report could conceivably figure out within a hundred or so votes how many he would need to climb into the top bracket. He might even undertake quietly to pledge enough votes to win. But an analysis of several instances involving candidates characterized as unfit showed how great the difficulty would be of adding enough votes to be indorsed.

³ *Annual Report*, dated June 4, 1912, p. 7.

⁴ *Ibid.*, 1915, p. 6.

Only two candidates in a list of fourteen persons who were denied indorsement could conceivably have pledged the necessary number of votes. One needed 30 and the other 55. Had the other candidates, who needed from 375 to 672 additional votes, attempted to solicit enough to put themselves "over the top," reports of their efforts would undoubtedly have reached the Association. Its officers certainly would have taken steps either to disqualify such candidates or to invalidate the entire poll.

2. *Is the information impartially presented? What precautions does the Association take to let the facts regarding a candidate's qualifications speak for themselves?*—As the first step in the plan, the Bar Association addresses a communication to the candidate, inviting him to fill out a detailed questionnaire requesting basic information concerning his character, education, experience and general qualifications for the office. With the exception of the final question,⁵ all of the inquiries call for factual information which may be expressed with either a "yes" or "no," or be answered by names, dates, places, and achievements. Information in such form is the essence of impartiality. The only way in which the judgment of the reader could be influenced would be to overstate or understate the record. The candidate's record is thoroughly reviewed, and checked from the extensive files of the Association itself. It is also given widespread publicity prior to the vote of the Association, and during this time the candidate has an opportunity to correct the record.⁶ It seems unlikely, therefore, that any gross exaggeration or injustice will result.

In addition to the written information, each candidate is personally interviewed by the Committee on Candidates. From these sources, and from any other data in the Association's files, the record for publication is prepared and is presented in systematic form covering the following: name, party affiliation, age, residence, birthplace, schooling, professional education, date of admittance to

* "Give reasons why you believe you are qualified and altogether fit to be a judge of the court."

⁵ For example, in 1928, one candidate complained of the wording of a mention of his preparatory schooling under a private instructor and of the omission of his special training in public speaking.

Another candidate complained that the rating given him by the Committee on Candidates was unjust and asked to appear before the committee to have the reason for this finding explained. He was invited to present any reasons for the committee to change its rating of him, but he was informed that the committee did not give *its* reasons for any finding.

In answer to the committee's rating that "his professional activities had been limited," another candidate submitted a list of 60 chancery cases he had handled, 36 of which were divorces. He also quoted an earlier report of the committee which had pronounced him qualified and a "conservative lawyer of fair legal attainments" and asked how after ten years' additional experience in every line of legal work, the committee now found him unqualified.

Four friends of another candidate protested as untrue the characterization of him as "temperamentally volatile."

Bar, character of practice, firm membership, appointive offices held, elective offices held, other public service, comments of civic organizations on his record in public office, membership in Bar associations, characterization by the Committee on Candidates, and its judgment as to his degree of qualification for the office.⁷ Candidates for the various courts are listed alphabetically under each separate court contest, irrespective of party affiliation. A picture of the candidate usually accompanies each statement.

3. *The accuracy of the Bar poll.*—The booklet of biography and analysis is mailed to each member of the Association, together with the following papers: a copy of the enabling resolution that authorized the Committee on Candidates to proceed with the investigation and specified how and when the Bar ballot should be taken; a copy of the ballot to be voted upon; an envelope marked "For Ballot Only," in which the member is to return his sealed ballot anonymously; a signature slip to be returned also, but not within the inner envelope containing the ballot; and finally, a postpaid envelope addressed to the canvassing committee, for returning both the sealed ballot and the signature slip.

⁷ A plethora of "qualified" characterizations applied despite seeming shortcomings in many candidates in 1929 provoked much criticism of the Committee's reports. In the "Christmas Spirits" of that year a skit entitled "We Deem Him Qualified" so ridiculed the expression that it has been used seldom since. The words follow:

"WE DEEM HIM QUALIFIED"

(Air: "Satisfied")

I

QUARTET: No doubt you've heard of our Committee, friends,
It is the one which kills or recommends,
Before a candidate the bench ascends,
He must have from us,
This well known chorus.
He's qualified, yes he's qualified!
Qualified to be Judge
Our Oh Kay is the sesame,
To whiten any smudge.

SOLO: Though he's not just what he ought to be,
We none the less think on the whole that he
Is still entitled now to our decree,

QUARTET: "We deem him qualified."

II

SOLO: Suppose a lawyer takes a little bribe,
Or to a padded payroll does subscribe,
You might expect from us a diatribe,
But we're not so mean,
We just wash him clean.

QUARTET: He's qualified, yes he's qualified! etc.

SOLO: If he'll promise us he will give back,
To the People, all the stolen jack,
We will sing him this e-le-gi-ac,

QUARTET: "We deem him qualified."

The poll is secret and the ballot is canvassed by a separate committee. All ballots are discarded which do not comply with the rules. The canvassing committee then reports its findings to the Board of Managers.

The precautions taken to assure an accurate count may be illustrated by instances of fraud attempted in the tally of the primary ballots, but discovered in re-checks by the canvassing committees. In the poll for the Circuit election of 1933, for example, one of the canvassers was found guilty of "falsely reading and tallying ballots" by his fellow-committeemen, and his expulsion from the Association was recommended. An investigation revealed that he had deliberately misread and mistallied votes in "calling off" the ballots to an Association employee, whom the committee exonerated of any

III

SOLO: Some Judges from a trifling incident,
Fly into a wild spell of temp'rment,
They rave and swear and get quite violent,
But still their rage does cool,
When they hear us drool.

QUARTET: He's qualified, yes he's qualified! etc.

SOLO: Though his temper be quite uncontrolled,
Though he's counted just a common scold,
He's got thousands of the voters sold,

QUARTET: "We deem him qualified."

IV

SOLO: You've heard the Supreme Court sometimes comment,
Upon some judge they say's incompetent,
To justice he's but an impediment,
But for old time's sake,
We give him this break.

QUARTET: He's qualified, yes he's qualified! etc.

SOLO: Though he knows not any law at all,
He has friends down in the City Hall
So from our lips these magic words still fall,

QUARTET: "We deem him qualified."

V

SOLO: A Judge cannot stay always on the bench;
He sometimes must adjourn, his thirst to quench!
To countenance such conduct gives a wrench—
But while we deprecate,
We still asseverate.

QUARTET: He's qualified, yes he's qualified! etc.

SOLO: Although no member of this committee
Ever takes a stronger drink than tea,
Such weaknesses we view with charity—

QUARTET: "We deem him qualified."

(Copyright, 1929, Chicago Bar Association)

blame. The canvasser was shown to be employed in the law office of one of the candidates in the election. The "errors" were designed to benefit his principal and the candidates politically aligned with him, the larger discrepancies being in favor of those who needed it most to receive Bar indorsement.

Two other instances of tampering with the vote are known to have occurred. One instance happened twelve or fifteen years ago and no record appears to have been made of it. More recently a young man was caught padding the vote in favor of a friend, a newcomer in the list of candidates. Knowing that his man would run low anyway, he thought it wouldn't do any harm to give him a few more votes, just so that it would not look so bad; and, besides, a few extra votes for him couldn't possibly affect the list of indorsements! The young man was so contrite and repentant when called to account that the Association thought he had suffered enough and took no disciplinary action against him.

4. *Personal bias or influence of the Association's officers.*—Two types of criticism of the Association's recommendations are frequently heard. One charge is that there is no guaranty that a strong indorsement from the Committee on Candidates will not be traded for later favors in the courtroom. Although the Association tends to follow the findings of the Committee on Candidates, it does not invariably do so. In any case the committee always consists of fifteen or more members, and no one man is likely to dominate the committee.⁸ Furthermore, before publication, its findings are reviewed by the Board of Managers, and any unwarranted characterization would surely be challenged. Any unethical influence obviously would have to be far reaching to affect both the committee and the board.

Another common criticism is that the Committee on Candidates is comprised of the older members of the profession whose practice is primarily with civil and corporate matters, and hence they represent the capitalistic point of view; also, that the members of this committee seldom appear in the courts, and that they do not know the incumbents or the applicants well enough to appraise their qualifications.⁹ The true function of the Committee on Candidates, however, is probably to act more as a board of appraisal and review than to evaluate only candidates known personally by its members.

Quite properly the viewpoints of the candidates are seldom investigated and do not become a matter of record in the Association's procedure. It is true the Association has shown a conservative character when specific situations have arisen. For example, in

⁸See p. 107, *supra*, for steps taken by the Association to prevent the possibility of such domination.

⁹See letter of Robert McCormick Adams in the *Chicago Bar Association Record* for February-March-April, 1930, p. 131.

1917, it voted to abandon the Bar primary rather than be drawn into the issues of the election raised by the Socialist candidates.¹⁰ In 1932, the Association strongly indorsed Judge James H. Wilkerson for promotion to the Federal Circuit Court of Appeals, although his record was strongly attacked before the United States Senate by labor-union interests.¹¹ The fact that the Association has asked and received the co-operation of such a representative labor-union institution as radio station WCFL in its 1933 campaign, however, apparently indicates that labor does not regard the Association as so prejudiced as to be untrustworthy or incapable of public spirit.

An indication of the Association's attitude toward candidates is offered by its record on individuals who have proved or disproved their fitness for office by specific acts. There have been numerous instances where young lawyers failed to win the Association's indorsement through immaturity or lack of experience. Yet when the attorney has later shown achievement and demonstrated his ability, often he has won the highest possible commendation and indorsement. This has been true particularly where the candidate has been elected to the Bench over the result of the Bar primary. On the other hand, the Association has been equally prompt to reverse itself and disapprove the conduct of incumbents whom it had previously indorsed. There have been at least seventy-six noteworthy cases of changes in standing; fifty-eight of this number gained in Bar regard, while eighteen lost ground.

5. *Does the Association tend to favor its own members?*—In various campaigns the charge has been made, and frequently repeated, that in its indorsement the Association tends to favor its own members.

An outstanding example of such criticisms was supplied in the Municipal Court election campaign of 1906, when the *Chicago Record-Herald* analyzed the results of the Bar primary to show that a majority of the winners for indorsement for the twenty-eight places were members of the Association.¹²

The fact was that the Association distributed eleven of its twenty-eight indorsements to non-members; ten of these eleven non-members also received the recommendation of the committee on qualifications, seven of the ten winning its highest designation of "well qualified."¹³

¹⁰See pp. 21-24 of the 1918 *Annual Report of the Chicago Bar Association*.

¹¹*Chicago Tribune*, March 9, 1932.

¹²*Chicago Record-Herald*, October 20, 1906, p. 1, and an editorial on October 21, 1906, as follows: "... There is only too much indication that personal, political and membership considerations have influenced the voting. . . ."

¹³*Ibid.*, October 13, 1906, p. 4, for committee recommendations, and October 20, 1906, p. 1, for facts of Association membership.

Furthermore, an analysis of the Bar primary records over the twenty-seven-year period since the printed committee reports were first published strongly indicates that although the candidate's membership in the Association has usually been presented—as a single item of his record—as a matter of fact, such membership seems to have had no appreciable effect in determining either the rating of the Committee on Candidates or the indorsement of the Bar as a whole.

In the last quarter-century candidates for judicial office in Cook County have been members of the Association in approximately 87 per cent of the cases. Among Circuit and Superior Court candidates the percentage of Bar Association memberships is 94.2 and 92.3, respectively; and in the Municipal Court primaries, where most of the Cook County judicial aspirants make their debut, the percentage of Association membership in nine out of thirteen elections has been 82 per cent. (See Table XIX.)

For a closer scrutiny of this matter, the three judicial elections occurring in 1932 and 1933 were analyzed. Seven separate contests

TABLE XIX
PERCENTAGE OF JUDICIAL CANDIDATES WHO WERE MEMBERS OF THE
CHICAGO BAR ASSOCIATION

Year	Election	Number of Candidates Regarding Whom Membership Information Was Available	Number Who Were Bar Association Members	Percentage
1906	Municipal Court (2, 4 and 6-year terms).....	73	48	
1912	Municipal primaries.....	56	42	
1916	Municipal primaries.....	23	19	
1920	Municipal primaries.....	34	30	
1924	Municipal primaries.....	44	38	
1926	Municipal primaries.....	51	46	
1928	Municipal primaries.....	35	34	
1930	Municipal primaries.....	39	34	
1932	Municipal Court election.....	24	21	
		— 379	— 312	82.3
1909	Circuit Court.....	19	19	
1915	Circuit Court.....	40	37	
1921	Circuit Court.....	40	37	
1927	Circuit Court.....	32	32	
1933	Circuit Court.....	40	36	
		— 171	— 161	94.2
1911	Superior Court.....	18	16	
1917	Superior Court.....	20	17	
1923	Superior Court.....	41	39	
1929	Superior Court.....	38	36	
		— 117	— 108	92.3
	Grand Total.....	667	581	87.1

for sixty-one judicial nominations or offices were held during these years.

The record of indorsements is presented in columns 6 and 7 of Table XX. Only one candidate was indorsed for any of these offices—a Republican candidate for the Circuit Bench—who was not an Association member. Against this record we should balance, however, the success of the candidates at the polls—columns 9 to 12, inclusive. We see that in every contest, excepting for vacancies, there were members of the Association who were nominated or elected but who had *not* been indorsed by the Association.

Had the Association sought merely to make a showing, it could surely have expediently distributed its indorsements so as to have produced a batting average of 95.1 instead of 60.7 per cent of indorsed candidates nominated or elected.

In several instances the Association has not hesitated to indorse candidates who were not members, or to condemn those who were, on the record of their personal qualifications. In commenting upon this point, President Edwin M. Ashcraft of the Chicago Association, in addressing the Illinois State Association in 1903, pointed out that the highest man in the Bar primary of that year had been Judge Francis Adams, a non-member of the Association.¹⁴

Another instance was the late Judge Ira Ryner, whom the Bar supported for election to the Circuit Court on the coalition ticket in 1921. He did not join the Association until 1926.

Another instance was Judge John Newcomer, who served out a judicial lifetime of twenty-two years on the Municipal Bench without ever being a member of the Bar Association, yet who never lacked the emphatic indorsement of the Association primary except at the very beginning and the very end of his career. Judge Newcomer was elected to the Municipal Court in 1906 over the double protest of the Bar, having been adjudged "lacking in judicial temperament" by its first committee on qualifications,¹⁵ and having ranked thirteenth in the Bar primary for the nine four-year associate judgeships.¹⁶ And finally, in 1928, he was again denied the indorsement of the Bar Association, this time on the basis of the infirmities of age alone. But in the intermediate years he was five times¹⁷ a Bar nominee—twice in the Republican races for party nomination only, and three times in the general election. In every one of those five Bar primaries the Association

¹⁴*Proceedings of the Illinois State Bar Association*, 1903, Part II, pp. 104-5. Twelve years earlier Judge Adams had defeated a nominee of a Bar primary.

¹⁵*Record-Herald*, October 13, 1906.

¹⁶*Ibid.*, October 20, 1906.

¹⁷Elections of 1910, 1916, and 1922, no Bar pre-primary being held in 1916.

TABLE XX
MEMBERSHIP IN THE CHICAGO BAR ASSOCIATION AS A FACTOR IN ASSOCIATION ENDORSEMENT
AND IN SUCCESS AT THE POLLS
(Analysis of Contests in 1932 and 1933)

Election	Date	Total Number of Candi- dates	Candidates Who Were Bar Association Members		Percentage Candidates Indorsed by the Association		Number of Places to be Filled	Percentage of Candidates Nominated or Elected Who Were				
			Number (4)	Per cent (5)	Members (6)	Non- Members (7)		Bar Association Members		Non-Bar Associa- tion Members		
								In- dorsed (9)	Not In- dorsed (10)	In- dorsed (11)	Not In- dorsed (12)	
(1)	(2)	(3)					(8)					
Republican Municipal Court primary ..	April 12, 1932	57	32	56	100	...	12	58	25	...	17	
Democratic Municipal Court primary ..	April 12, 1932	46	25	54	100	...	12	42	50	...	8	
Municipal Court election.....	Nov. 1, 1932	24	21	88	100	...	12	67	33	...	...	
Superior Court vacancy election.....	Nov. 1, 1932	4	4	100	100	...	2	100	...	...	...	
Superior Court vacancy election.....	June 5, 1933	...	...	...	100	...	...	...	...	...	...	
Republican and Democratic tickets..	...	4	3	75	...	...	2	100	...	...	...	
People's Judiciary ticket.....	...	2	0	0	...	...	...	...	...	...	...	
Probate Court vacancy election.....	June 5, 1933	...	...	...	100	...	...	100	...	...	...	
Republican and Democratic tickets..	...	2	2	100	...	...	...	...	...	...	...	
People's Judiciary ticket.....	...	1	1	100	...	...	...	...	...	...	...	
Circuit Court election.....	June 5, 1933	...	...	...	95	5	20	60	40	...	...	
Democratic coalition ticket.....	...	20	20	100	...	...	...	...	...	...	...	
Republican ticket.....	...	20	16	80	...	...	...	...	...	...	...	
People's Judiciary ticket.....	...	20	6	30	...	...	...	...	...	...	...	

accorded him sixth place or better, among several times that many applicants for approximately twice that many positions.

6. *Age of candidates.*—Old age, in general, seems to carry no penalty so far as Bar indorsements are concerned. Several candidates have failed of indorsement as age brought infirmities which seemed to hinder their full performance of duty, but others have won unfaltering recognition to the last. The picture to be complete must include Judges Windes and Prindiville, re-elected with Bar support at the age of 73; Judge Tuthill, more strongly indorsed at 74 than at 67; and Judge Baker, re-elected at 75 with the highest Bar primary ranking he had received in five previous campaigns.

If the Bar primary vote were a politically controlled agency—a creation of the Republicans to take its toll from opposing party ranks—no better excuse than age could be found for demanding the retirement of opposition judges long in service. But instead of condemning aging Democrats to retirement, the Bar primaries have indorsed Democrats Tuley, Windes, Prindiville, and Baker for continued service long past the seventy-year mark, along with Republicans Gary, Barnes, Heap, Holdom, Frederick Smith, and Tuthill; while probably the two most conspicuous examples of denied indorsement due to age were Judges Newcomer and Richardson—both Republicans.

7. *Party affiliation as a factor in Bar Association indorsement.*—The political alignment of 413 candidates indorsed by the Bar Association primaries in Circuit, Superior, and Municipal Court elections (not including Municipal Court primaries) over a forty-seven-year period is presented in Table XXI. It will be seen that 55.4 per cent of these 413 Bar-indorsed nominees were Republicans, 39.5 per cent were Democrats, and 5.1 per cent were third-party candidates. Inasmuch as the Bar Association's membership is supposed to be predominantly Republican, this might seem to be an indication of partiality toward Republican candidates.

On the whole, the trend has been preponderately toward the Republicans. In a total of 38 elections, the majority of the Association's indorseees has been Republican candidates in 22 or 58 per cent of the cases; in nine contests the majority was Democratic; and in seven instances the indorsements were evenly divided between the candidates of the two leading parties.

Nevertheless, the matter cannot be conclusively determined on this showing. It must be remembered that the Association strives to nominate on judicial qualifications, and the matter really reduces to the relative average abilities of the candidates nominated by the two parties. The same data might also be used to prove that the Republicans had nominated more well-qualified candidates than their Democratic confrères!

TABLE XXI

POLITICAL AFFILIATION OF CANDIDATES INDORSED BY BAR ASSOCIATION
IN MAJOR ELECTIONS SINCE 1887

Year	Circuit Court			Superior Court			Municipal Court		
	Rep.	Dem.	Ind.	Rep.	Dem.	Ind.	Rep.	Dem.	Ind.
1887.....	3	0	3						
1891.....	5	6	0						
1893.....	1	0	0	1	1	0			
1898.....				4	2	0			
1900.....				4	0	0			
1902.....	2	2	0	2	2	0			
1903.....	6	8	0						
1904.....				4	2	0			
1905.....				4	0	0			
1906.....							14	3	11
1908.....							6	3	0
1909.....	7	7	0						
1910.....				5	1	0	9	0	0
1911.....				7	3	0			
1912.....							9	1	0
1914.....							8	2	0
1915.....	11	9	0						
1916.....				2	3	1	5	5	0
1918.....							7	4	0
1920.....							4	6	0
1921 (Co- alition.....)									
1922.....	10	10	0	No Bar 11	primary 9	0	10	6	0
1923.....							7	6	0
1924.....							4	8	0
1926.....									
1927.....	10	7	2 Ind. 1 Ind.	Rep.* Dem.					
1928.....				1	2	3	7	5	0
1929.....				7	9	0			
1930.....							5	7	0
1932.....							7	5	0
1933.....	13†	7							
1934.....				1	5		6	6	0
Total.....	68	56	6	53	40	4	108	67	11

*Regular party members denied place on coalition ticket by party leaders.

†Five of these ran on the Democratic ticket.

An examination of the record in detail indicates that ability has been recognized, whether it be in Republican, Democratic, or independent candidates. Individual Democrats of recognized ability have set the pace for their Republican competitors in many Bar primaries.

In the second place, at least eight times during the forty-six year period Democrats have won a *majority* of the Association's indorsements—four times in the last ten years. Furthermore, the Association has shown a disposition to seek out merit even among

the independent candidates whenever Democratic opposition has been weak.

As early as 1891 the Association showed a nonpartisan spirit in its primaries by indorsing Democrats for six of the eleven Circuit court positions open that year. The situation was practically repeated in 1903, when Democrats were recommended for eight of the fourteen Circuit Court seats then to be filled. Judge Francis Adams, a Democrat, led the Bar primary slate, receiving more than 90 per cent of the poll. Democrats also captured third, fourth, fifth, and seventh places in this primary, which caused President Ashcraft to declare also that "the whole vote indicated a total disregard of party affiliations." It should be remembered, however, that all of these indorsees were incumbents seeking re-election—which indicates the strong sentiment that a good judge was entitled to re-election, be he Republican or Democrat.

The outcome in 1903 tended to counterbalance the completely Republican trend three years earlier—after which S. S. Gregory, a Democrat, had called attention to this result in his presidential report with this warning:

Under the circumstances this was perhaps not unnatural; but should such be generally the result in a series of years, it would demonstrate the futility of these efforts and entirely destroy the influence of the Association in such matters.¹⁸

The fact that in only four elections have third-party candidates been indorsed may at first indicate a bias against independents. There was undoubtedly such a prejudice against the Socialist candidates when they sought judicial office. The refusal to hold a primary in 1917¹⁹ unmistakably suggests this. But other considerations will help to explain the situation confronting the Association respecting independents. The Socialists have not filed a complete judicial ticket since 1922.

In reality, the two major parties have dominated the elections to such an extent that few able candidates on their own initiative would or could be induced to seek the office without the support of one of the regular parties. The theory that the office should seek the man has been effectively modified by a controlling condition of practical politics.

Another point is that since the Socialist party crumpled in local contests, many third-party movements have been mere "flashes in the pan," and upon investigation have been in the nature of per-

¹⁸*Chicago Legal News*, XXXIII (October 27, 1900), 86.

¹⁹The Association declined to hold a primary in 1917 on the ground that to do so would be giving undue prominence to independents who sought to embarrass the national government in its conduct of the war, and who also promised in advance to interpret the law in favor of one class of the population only—"the laboring class" (*Reports of Chicago Bar Association*, 1918, pp. 21-24).

sonal publicity rackets or "shakedown" schemes of enterprising promoters.²⁰

The Association has always reported and voted upon independent candidates in its primaries. Perhaps the best evidence of the Association's attitude is the fact that twice (1927 and 1928) it has supported independent candidates when some of the nominees of the major parties were considered inferior or wholly unfit.

8. Residence, sex, religion, race, and nationality as factors in Bar Association indorsements.—The printed report of the Committee on Candidates offers a basis for ascertaining how far these factors are officially recognized by the Association.

Residence.—The residence of each candidate is listed, presumably for purposes of identification. The fact that the parties select their candidates from all parts of the city tends to avoid a concentration of individuals in a limited number of districts. The fact, also, that there are no important neighborhood groups among the lawyers that would serve to develop local loyalties tends to minimize the chances that a candidate will be favored simply because he happens to reside in a given community.

Sex.—The pictures and given names of the candidates indicate the sex of the candidate. Although there is a Woman's Bar Association, female lawyers may become members of the Chicago Bar Association, and in 1932 eighty-five had thus affiliated.

Women have sought judicial office in several elections, and their candidacies have received the same consideration as any others.

In the November, 1928, election, for example, there were two women among the twenty-one candidates for a vacancy in the Municipal Court Bench. One received a 25-line write-up and the other 19 lines. The average length of write-ups for the entire list was 19 lines. One woman was characterized as "qualified" and the other as "well qualified." In the primary these two candidates ran seventh and ninth; while in the public election they dropped to thirteenth and fourteenth, respectively.

Only one woman, thus far, has been elected judge of a Cook County Court, Miss Mary Bartelme being elected in 1923 to fill a

²⁰Instances of this inexpensive professional publicity appears in the chronic candidacy of many individual lawyers for office. One person, for example, has the practice of filing as an independent and then magnanimously withdrawing at the last moment, perhaps for a consideration! Another individual bobs up on nearly every ballot whether the office be for judge, mayor or governor. One attorney sought every local judicial office except probate judge—running twenty-five times during an eighteen-year period.

The "American National party" in the November, 1930, election, was an example of an individual political enterprise. The "party" filed a complete slate for all offices, the list of nominees including all of the members of one family. Its slate for the Municipal Bench contained the names of several persons who had been nominated without their knowledge or consent and who learned of their candidacy after the legal date for withdrawing had passed.

vacancy in the Circuit Court. For ten years she had occupied the position of "female assistant" to the judge of the Juvenile Court. Her nomination and election had the support of a group of women's civic and social service clubs interested in the work of the Juvenile Court. In reporting upon her qualifications, the Committee on Candidates stated,

She has occupied a semi-judicial position in connection with the work of the Juvenile Court, for which she is exceptionally well qualified. Her lack of general experience as a lawyer limits her qualifications for the other duties of the office of Judge of the Circuit Court.²¹

In the preferential vote, Miss Bartelme polled 605 votes to 1,806 for her opponent, D. J. Normoyle. In the election, however, she won by a vote of 208,303 to 194,192, and was assigned to the Juvenile Court. When Miss Bartelme was a candidate for re-election, in 1927, she ranked fourteenth place in the Bar primary among the 32 candidates for the 20 offices. In the public election she placed fourth in the field.

Religion.—No mention is made of this factor, and the only way in which a candidate's church affiliations could be discovered is by inference, by searching one of the *Who's Who in Chicago* volumes, or by personal inquiry. The first possibility is likely to produce erroneous inferences, and the two latter processes are extremely tedious and difficult to do completely. It is doubtful if this factor has often had any appreciable influence in the Association's voting.

Race and nationality.—The printed report touches the questions of race and nationality only indirectly, no specific mention being made of either, except in the case of Negroes. Of course, inferences may be drawn from names, faces, or places of birth. In the case of Negroes, however, the direct statement is usually made, "He is a colored man." In one instance, the candidate's own declaration to the committee was quoted: "I am a candidate because the colored people feel one of their number worthy and qualified ought to be put forward for judicial honors."

In the period from 1906 through 1936 there were twenty Negro candidacies. Eighteen were for the Municipal Court. Five of these candidacies involved the same individual, Judge A. B. George, who was twice nominated for and once elected to the Municipal Bench—the only Negro so honored thus far.

The consideration which these candidacies have received from the Bar Association is worthy of notice. Each had a complete record published and each was voted upon in its respective primary. The standing of each candidate in the Bar poll and in the public vote, relative to other candidates in the same election, is set forth in Table XXII.

²¹*Chicago Bar Association Report of Committee on Candidates*, October 15, 1923, p. 18.

TABLE XXII
RELATIVE RANKING OF NEGRO CANDIDATES IN BAR ASSOCIATION
PRIMARIES AND IN PUBLIC BALLOTS

Candidate	Year	Total Number of Candidates		Rank of Candidate		Number of White Candidates Ranked Lower Than Negro in Bar Primary
		To Be Elected	On Ballot	In Bar Poll	In Public Vote	
<i>In Municipal Court primary:</i>						
F. A. Denison.....	1916	10	28	*	21	....
G. W. Ellis.....	1918	10	33	25	13	8
J. A. Scott.....	1920	10	23	23	11	0
R. E. Westbrook.....	1922	10	30	24	22	6
A. B. George.....	1924	12	35	21	9†	14
J. Harden.....	1924	12	35	34	34	1
J. B. Cashin.....	1928	12	27	24	20	3
H. M. Porter.....	1928	12	27	27	23	0
A. B. George.....	1930	12	34	15	11†	19
A. B. George.....	1932	12	57	18	19	39
William H. Haynes.....	1932	12	57	22	17	35
William H. Haynes.....	1934	12	33	15	10†	18
William H. Haynes.....	1936	12	45	17	6†	28
Richard Hill, Jr.†.....	1932	12	46	34	32	12
J. Harold Mosely.....	1932	12	57	42	18	15
<i>In Municipal Court election:</i>						
F. L. Barnett.....	1906	9	24	18	10	6
A. B. George.....	1924	12	24	21	12†	3
A. B. George.....	1930	12	36	15	24	21
<i>Circuit Court and Superior Court:</i>						
E.H. Morris.....	1923	20	60	37	39	23
Harris B. Gaines.....	1933	20	60	46	38	14

*No Bar Poll primary in 1916.

†Democrat.

‡Nominated or elected.

While it is a fact that none of the Negro candidates was indorsed by the Association, it is also a fact that only in two instances were these candidates the last on the Association's list of preferences. In each of the other instances there were white men whom the Association regarded as *less* qualified than the Negro candidates. Here again the matter of personal qualifications must be taken into account. In eight instances the committee on candidates has characterized the Negro candidate as lacking the requisite qualifications; in two instances "fairly qualified" was the verdict.

The consideration given the five candidacies of Judge George is an example of the care taken to present facts, as the committee sees them. In 1924 he was characterized as follows:

Albert B. George—Republican. Age 50. He was born in Washington, D. C., is a colored man and resides at 3231 Vernon Avenue. He was educated in the

public grammar and high schools of Washington, D. C., and the Spencerian Business College. He studied law at Northwestern University Law School, graduating in 1897 with the degree of LL.B. He was admitted to the Bar in 1897 and since that time has been engaged in general practice. Since 1898 his office has been on the fourth floor of the Ashland Block. He states to the committee: "I am a candidate because the colored people feel one of their number worthy and qualified ought to be put forward for judicial honors."

In twenty-six years' practice he has built up a good reputation as a lawyer deserving the confidence of the Bar and of his clients. We consider him qualified.²²

In 1930, at the end of his first term as judge, the committee reported as follows:

He is prompt, industrious and diligent in the despatch of his judicial duties. He is an able lawyer. He is fearless and positive in expressing himself but impatient at times to the point of irritability. There is a marked difference of opinion among the members of the Association as to his qualifications for judicial office.

This opinion continued to be held through his candidacy in 1932.

Of William H. Haynes, in 1932, the committee said: "He is a man of integrity. His education, professional experience and reputation are satisfactory. He is qualified."

Concerning Richard Hill, Jr., it said:

. . . . he is fairly qualified but his attitude in response to a question as to whether or not he will continue as president of a bank if elected judge causes the committee to recommend that he be not nominated.

The point might be raised that it is a prejudicial act to draw attention to the color of a candidate. Similar reference is not made to other candidates, although the fact of a candidate's alien birth is mentioned as a part of the biographical record, when such is the case.

Whatever the indications of impartiality may be, it might be argued, furthermore, that since no Negroes are now members of the Association, any consideration of them as candidates will be prejudiced by that circumstance. Such was the viewpoint of a group of colored people who took the Association to task in the 1933 campaign.²³ The fact is that the Association does not bar Negro members and that at least two of them have been members. One of these died and the other was dropped when he failed to pay his dues. The matter was explained to the writer by an officer of the Association as follows:

As to admitting people to membership, however, we have only two rules: they must have been admitted to the Bar, and they must have good professional and moral standing. I don't think our committee has ever rejected a man because of his color. In practice, however, in the rare instances in which a Negro files an application for membership here, his sponsors usually persuade him to withdraw it, in favor of his own group. In fact, one of the two Negroes that we had as members was here against his will, originally; he was

²²*Report of Committee on Candidates*, dated March 25, 1924, p. 8.

²³See chap. XXII, p. 238.

an employee of the Corporation Counsel's office, and he joined simply because the Corporation Counsel insisted that every member of his staff be a Bar Association member. He continued to remain a member after leaving that office, but he always counseled the younger Negroes, "You don't want to join up here; you want to go down there where you belong, where it'll be easy to mix socially."

The Negroes have their own organization, the Cook County Bar Association, and we co-operate nicely, for example in such matters as disbarment proceedings; every now and then they ask us for a speaker. Negroes are often in our quarters as guests, especially through being members of committees which meet here. Their Association holds its own bar primary every year, and the results are usually about the same as ours; this year, for example [1933], they endorsed the Negro candidate [Harris B. Gaines], but otherwise their list was very little different from ours.

The Association has been charged with being "a hotbed of anti-Semitism." The allegation would be hard to sustain. It is true that several candidates of Jewish extraction have been singled out for critical comment and in certain instances have been rejected

TABLE XXIII
ATTITUDE OF BAR IN 1933 CAMPAIGN TOWARD CANDIDATES OF
JEWISH EXTRACTION

Candidate	Report of Committee on Candidates	Rank in Bar Primary
Characterized as Unqualified		
Michael Feinberg.....	"Possesses legal ability, is diligent in dispatch of business, but has demonstrated a lack of essential qualifications. He should not be re-elected."	Twenty-eighth
Harry M. Fisher.....	"Has made notable contributions to advancement of civil and criminal jurisprudence. He possesses legal ability; but he has not the confidence of the Bar; he is unfit for judicial office; he should not be re-elected."	Twenty-seventh
Samuel L. Golan.....	"Lawyer of considerable experience in trial work; he has not demonstrated his fitness for judicial office."	Thirty-fifth
Characterized as Qualified		
Benjamin P. Epstein...	"Is well grounded in law and possesses requisite capacity and temperament. He is qualified."	Twenty-third
Hugo M. Friend.....	"His judicial service has been of the highest quality; he merits the Bar's commendation; he is exceptionally well qualified for the office. He should be re-elected."	First
Samuel Heller.....	"As judge of Municipal Court he was prompt and diligent in the despatch of business. His judicial service in the main gave satisfaction. He is qualified to be a judge."	Eighteenth

as utterly unfit. It is also a fact that the exact opposite is true, as the characterizations in the 1933 campaign, quoted in Table XXIII indicate.

SUMMARY

We have endeavored to show that the Association considers the various elements of judicial fitness to a greater or lesser degree, and that in most of the matters partiality tends to be minimized as far as it is humanly possible to do so in a situation involving standards of fitness and conduct which depend upon flexible human judgment for estimation. We believe that a balance on any or all of these points, struck for a period of many years, will tip favorably in the direction of the Association.

CHAPTER XVI

HOW REPRESENTATIVE OF THE ENTIRE CHICAGO BAR ARE THE RECOMMENDATIONS OF THE CHICAGO BAR ASSOCIATION?

What at first appears as an "Achilles heel" in the Bar Association's plan of recommending judicial candidates is that since 1903 its indorsements have been issued as the opinion of its members only. Since the Association is a group within a group, would not the recommendations of the whole be preferable to those of only a part?

The Association's participation in judicial selection has been frequently criticized on this ground. Its recommendations have been challenged as not being representative of the legal profession as a whole and as not being even a true consensus of the Association itself. What are the facts on both points?

HOW INCLUSIVE IS THE ASSOCIATION OF THE CHICAGO BAR?

The Chicago Bar includes all attorneys who have been duly admitted to the Illinois Bar and reside in Chicago or Cook County. The proportion of attorneys belonging to the Chicago Bar Association has been computed for different years, since 1874, when the Association was organized. This information is presented in Table XXIV for the period since 1885.

Several pertinent facts should be noticed. From 1885 until 1932 the Association experienced almost uninterrupted growth. Its representative character declined during the early part of the period, but from a low point of 13.1 per cent in 1898 the Association's membership increased faster than that of the Bar as a whole until 1926, when an index of 56.3 per cent was reached.

The remarkable growth of the Association since 1900, and a consequent heightening of its representative character, is seen more clearly if we compare the relative growths of the Association and the profession as a whole. During the decade from 1900 to 1910, the number of lawyers increased 10 per cent, while the Association's membership doubled—thus gaining ten times as fast as the whole Bar. The next decade saw a 30 per cent growth in the number of lawyers, and a 260 per cent increase in the Association's roster. The period from 1920 to 1930 brought a 50 per cent increase in the Bar as compared with a 220 per cent growth in the membership of the Association. In the first thirty years of this century the whole Bar increased slightly less than twofold, whereas the Association increased its rolls nearly seven times.

TABLE XXIV
ACTUAL AND COMPARATIVE MEMBERSHIPS OF THE CHICAGO BAR
ASSOCIATION AND OF THE ENTIRE BAR OF CHICAGO

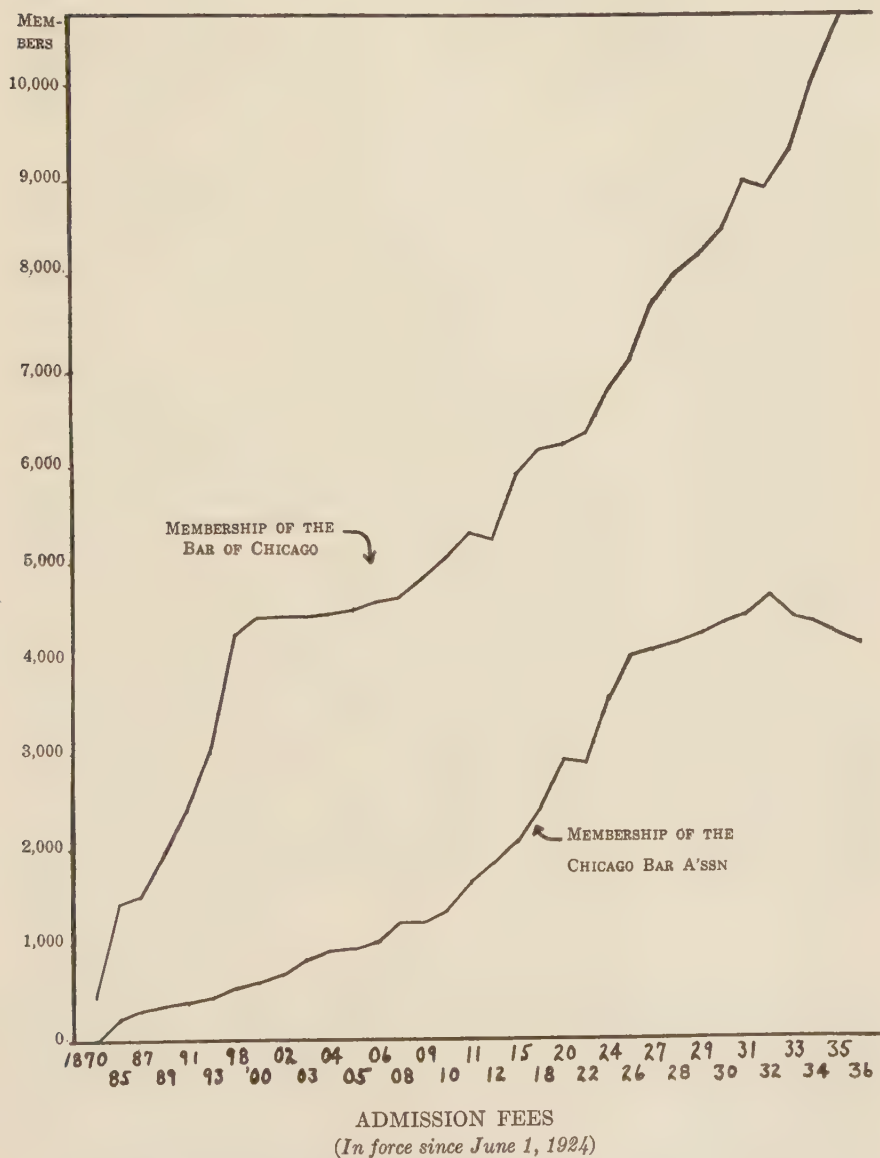
Year	Membership of The Chicago Bar	Membership of Chicago Bar Association	Ratio of Chicago Bar Association to Entire Bar of Chicago
1870.....	469	None	....
1885.....	1,400	250	17.8
1887.....	1,500	317	21.1
1889.....	1,912	385	20.1
1891.....	2,377	416	17.5
1893.....	3,090	450	14.6
1898.....	4,250	559	13.1
1900.....	4,418	635	13.7
1902.....	4,418	695	15.7
1903.....	4,418	830	18.8
1904.....	4,450	895	20.1
1905.....	4,525	925	20.4
1906.....	4,600	1,004	21.8
1907.....	4,608	1,030	22.3
1908.....	4,615	1,193	25.8
1909.....	4,800	1,193	24.8
1910.....	5,050	1,300	25.7
1911.....	5,300	1,669	31.5
1912.....	5,262	1,838	34.9
1914.....	5,703	1,979	34.7
1915.....	5,894	2,091	35.5
1916.....	6,085	2,145	35.2
1918.....	6,204	2,400	38.7
1920.....	6,266	2,900	46.5
1922.....	6,344	2,874	45.3
1923.....	6,560	3,135	47.8
1924.....	6,770	3,594	53.1
1926.....	7,146	4,026	56.3
1927.....	7,708	4,107	53.3
1928.....	8,000	4,187	52.3
1929.....	8,200	4,267	52.0
1930.....	8,460	4,347	51.4
1931.....	9,000	4,427	49.2
1932.....	8,925	4,650	52.1
1933.....	9,315	4,420	47.4
1934.....	10,000	4,350	43.5
1935.....	10,773	4,200	39.0
1936.....	11,391	4,100	36.0

Sources: Chicago Bar: from early city directories and from Sullivan's *Law Directory*. Chicago Bar Association: from reports of the Association in the *Chicago Legal News* or from Association files.

Conditions of membership.—The official tests of eligibility to Chicago Bar Association membership are formal admission to the Bar and a good reputation on the part of the applicant. Membership, however, is “voluntary” and “selective.” An applicant must voluntarily seek admission, and he must be willing to support the Association’s various activities, as well as able to assume the financial obligations involved.¹

¹The fees in force are:

CHART I
GROWTH OF THE CHICAGO BAR ASSOCIATION AND THE
BAR OF CHICAGO



Members admitted to the Bar less than five years.....	None
Members admitted to the Bar more than five and less than ten years.....	\$25.00
Members admitted to the Bar more than ten years.....	50.00
Non-resident members.....	10.00

The membership is "selective" to the extent that the applicant must be personally acceptable to the Association's Committee on Admissions and its Board of Managers. Officially, the sex, race, color, or creed of an applicant is not a barrier. The membership at various times has included representatives of many races, colors, creeds and both sexes; however, the fact that only two Negroes have ever been members of the Association and that none now belongs, indicates how truly "selective" the matter of membership may become.²

From the point of view of the individual attorney there may be several deterrents to membership. A lack of interest in the Association, the inaccessibility (for him) of its quarters, and inability to pay the costs of membership probably explain, in part, the non-affiliation of more than one-half of the local Bar.

A brief inquiry into the composition of the legal profession will yield interesting information on this point.

In the first place, allowance must be made for a considerable number of licensed attorneys who are not in active practice and would not be likely to join the Association. One informed source estimates the number of such attorneys at 2,500, or approximately one-quarter of the whole Bar.³ This group includes attorneys whose professional duties may lie entirely outside the field of the law or whose legal attainments may be auxiliary to an executive capacity in a commercial establishment. Many such attorneys, especially in the high-salaried group, are known, however, to have retained their membership in the Association.

Inaccessibility of the Association's quarters undoubtedly deter many. Approximately 18 per cent of the members of the Bar maintain their offices in the area outside the central business district.⁴ Of this number, approximately 72 per cent are not members of the Association. Approximately 12 per cent of the Association's membership, however, is also listed as having headquarters (home or office) outside the central business district. This group includes officers of outside corporations, retired lawyers, and non-

ANNUAL DUES

(*In force since September 1, 1931*)

Members admitted to the Bar less than two years.....	\$15.00
Members admitted to the Bar more than two and less than five years.....	25.00
Members admitted to the Bar more than five years and less than ten years.....	37.50
Members admitted to the Bar more than ten years.....	50.00
Non-resident members.....	10.00
Law school members.....	6.50

²See Chap. XV, p. 156.

³In April, 1935, the Association's membership committee estimated that there were 3,600 non-member Chicago lawyers eligible to belong to it.

⁴For this purpose the district is taken as including all the area south of Chicago Avenue, east of Halsted Street, and north of Roosevelt Road.

resident lawyers who retain their membership in the Association, although living in another community.

While 82 per cent of the entire Bar maintains offices in the central business district, only 44 per cent of these downtown attorneys are members of the Association. For the other 56 per cent the cost of membership is probably a deciding factor. Although the Association's large and up-to-date law library is a convenient asset to any attorney who may not have access to the other library facilities, and although this alone may be worth the cost of membership, the Association is essentially a professional club or society. While the admission fees, annual dues, and other expenses are low in comparison with the customary fees of a social club of equal standing, they represent a burden which a young or struggling lawyer could easily forego without materially cramping his professional style.

Indications that the Association is representative of the active Bar.—Since there is unquestionably a considerable group of inactive lawyers, is there any evidence that the Association is representative of the active element of the profession?

Three circumstances indicate that it is.

The Association is by far the largest group of lawyers in Chicago. To show the comparative size of the various groups, an analysis was made of 5,375 of the 10,000 or more lawyers listed in Gunthorp's *Law Directory* for 1932. The names listed under the

TABLE XXV

COMPARATIVE STRENGTH OF VARIOUS CHICAGO ASSOCIATIONS OF ATTORNEYS IN RELATION TO THE CHICAGO BAR ASSOCIATION (AS OF 1932)

Group	Number of Members in Selected List of 5,375 Attorneys	Percentage of Local Bar Included on Basis of Selected List	Percentage of Members Also Affiliated with the Chicago Bar Association
<i>Local Associations:</i>			
Chicago Bar Association			
With no other affiliation			
1,059 (19.7 per cent)			
Complete membership	2,484	46.2	.....
Justinian Society of Advocates (Italian)	25	0.5	64.0
Woman's Bar Association	62	1.1	44.0
Cook County Bar Association (Negro) . .	71	1.3	3.0
Lawyers' Association of Illinois	366	7.0	50.0
<i>Local members of outside associations:</i>			
Illinois State Bar Association	1,376	25.6	79.0
American Bar Association	1,147	21.3	83.0
No affiliations in professional groups	2,236	41.6	.....

letters *A, B, D, E, H, M, S,* and *W* were selected as a representative sampling of the entire list. The membership of the attorneys in the various Associations was tabulated and the strength of the different groups was compared (Table XXV).

The Associations listed are the only ones in a position to undertake the type of activity carried on by the Chicago Bar Association. There are two other specialized groups—the Patent Law Association and the Chicago Law Institute—whose members are also included in the Chicago Bar. These two organizations comprise 2.8 per cent and 13.2 per cent of the total Bar, respectively. They also overlap the Chicago Bar Association in personnel, for 41 per cent of the Patent Lawyers and 71 per cent of the Law Institute members also have affiliations with the Chicago Bar Association. Neither organization interests itself in matters pertaining to the profession as a whole.

The extent to which the Bar Association represents the local Bar is apparent in Table XXV. The aggregate membership of the four other Associations which are now or have been active locally is less than 10 per cent of the total Bar. One of this number (the Lawyers' Association) has been in suspended animation since the depression. The overlapping in membership between these groups and the Chicago Bar Association is high in each instance, excepting the association of Negro attorneys, and even the social gulf between these two associations does not deter them from co-operating in matters of common professional interest—disbarment proceedings, committee meetings, etc.⁵ While Illinois State and American Bar associations have no local activities, it is an evidence of the representative character of the Chicago Bar Association that 51 per cent of its members are also members of one or both of these state and national organizations. This overlapping of memberships between the Chicago Bar Association and the other local professional groups is a second indication of the former's representative character.

A third indication is the fact that the Association acts for, and in behalf of, the entire profession in matters of conduct or where the opinion of the lawyers as a group is involved in a public matter. Thus practically all disciplinary proceedings against members of the Cook County Bar are instituted by the Association. It is the agent of the Illinois Supreme Court in any such action against lawyers in the local district, whether or not they are in the Association.⁶

In 1928 the Association demanded vigorous action in the investi-

⁵See report of interview in chap. XV, p. 157.

⁶From its earliest days the Grievance Committee has been deemed as its most important committee. The first disbarment action was brought in 1875. In the nineties, when the activities of the Association reached a low ebb, the efforts of the Grievance Committee to "clean up" the Bar became the best

gation and prosecution of election fraud and violence; and in 1932-33 its investigation of receivership abuses, and its resulting reports and recommendations, were the only inquiries into that situation outside an abortive legislative inquiry and some limited newspaper disclosures.

The representative capacity which the Association assumes as a sort of public censor of judicial and professional conduct is indicated by the fact that an open letter was addressed to it by a candidate for the state's attorneyship in 1932, outlining charges of political favoritism against his opponent, a judge in office.⁷ In matters of professional conduct or abuses, demands are often addressed to the Bar Association for inquiry and remedial action; and it is frequently criticized for what appears to be dilatory tactics in dealing with situations.

The Bar Association also acts for the profession in matters of legislation, assistance to the judges in the formulation of court rules, creation of new tribunals, etc. Its committees, for example, had prominent parts in drafting legislation for such matters as the Juvenile Court act; the civil practice act; the public defender system, etc. The fact is that the Association's list of committees covers the whole realm of activities within the profession, as well as the relations of the legal fraternity with the public. This principle even extends to matters of levity and gentle spoofing, à la

argument in persuading prospects to join the Association. In the words of Russell Whitman, "the Association was the only body of men to discipline and get rid of unworthy members of the Bar. . . . The necessity for the Grievance Committee and its work may fairly be considered as having kept the Association going" (*American Blue Book* [Illinois Attorneys], 1927).

The extent of this phase of the Association's activity is indicated in the following record, mentioned by Mr. Whitman, covering the twenty-year period ended in 1926: 240 disciplinary cases were presented; 155 lawyers were disbarred; 45 were suspended or disbarred and later reinstated; and in 40 instances, informations were dismissed or were abated with the death of the respondents, or the respondents were reprimanded or had themselves withdrawn from the Bar.

The Association's assumed jurisdiction has extended to the conduct of lawyers who are public officers. Among the historic investigations it has undertaken have been the complaints against Bankruptcy Registrar Hibbard and United States District Judge Henry W. Blodgett in 1879; the inquiries regarding Judge Arthur H. Chetlain in 1906-8 (*Chicago Bar Association Reports*, March 1, 1908, pp. 72-83; in this case the Association took 2,100 pages of testimony), and Judge George Fred Rush in 1923 (*Chicago Bar Association Record*, June, 1926, pp. 3-6); the investigation of the Sanitary District law department, and subsequent disbarment proceedings, in 1929 (*Chicago Bar Association Record*, April, 1929, pp. 315-35. For subsequent developments in the case see *Chicago Tribune*, July 9, 1931; December 24, 1932; and February 24, 1933). The Association also investigates complaints against the current official conduct of judges and issues a public statement if the facts warrant (for example, see *Chicago Bar Association Record*, January, 1931, pp. 53-54, for a protest against certain comments from the Bench by Judge Harry Fisher which in the Association's opinion "had no proper place in the hearing of this cause").

⁷*Chicago Tribune*, April 2, 1932.

Gridiron Club, in the annual "Spirits," or holiday revelry series. When all of the Association's activities are considered in their nature and scope, there is no escaping the fact that it acts not merely for its own members, but for the entire local legal profession and is regarded by the public at large as the spokesman for the profession.

Are the Bar primaries representative of the profession?—To what extent have the polls conducted by the Chicago Bar Association been representative of its entire membership and of the Bar as a whole? The first step in answering this question, obviously, is to ascertain the trends of the Bar primaries in terms of the relative numbers of Association members and members of the Bar at large that participated in the various referenda. This information is presented in the accompanying tables and chart.

In Table XXVI and Chart II is presented a picture of the participation of members of the Bar and of the voting public in corresponding judicial contests. Since the successive elections are shown serially according to date of occurrence and irrespective of the court for which they were held, we have a representation of the comparative *trends* of both the lawyers' interest in Bar primaries and the public's interest in judicial selection. The bottom line of the chart represents the percentage of Bar Association members voting in Bar primaries. Prior to 1898, and again in 1902, the Association conducted the poll on a Bar-wide basis, but since 1903 the referendum has been limited to its own members.

While the degree of participation has varied greatly (from 90 per cent in 1906 to 34 per cent in 1935), an impressive fact is that in all but six of the primaries the percentage of the members participating has exceeded 50 per cent.⁸ Over the period since 1898, and covering 47 primaries, the average participation was 62.7 per cent. Statistically speaking, this is a fairly high degree of participation, especially when we consider that the primary incentives for the members to vote are loyalty to the Association and interest in an abstract ideal. That this record for Chicago often compares favorably with participation in Bar primaries in other cities is apparent in Table XXVII, which presents data for the Cleveland, Los Angeles, and Philadelphia Bar associations.

The middle line in Chart II indicates the degree of participation by the entire local Bar (taking into account all lawyers listed, irrespective of the amount of their professional activity). When the local Bar numbered less than 3,100 attorneys, and the primaries

⁸The comparatively low percentages in these instances are perhaps explainable by peculiar circumstances surrounding the particular elections. For example, in 1931 the Bar primary voted on only two offices, for one of which there was only one candidate and for the other only two contestants. In 1932 the Bar primary for the November election was held in mid-summer when many lawyers are on vacation. The lowest percentage—33.8, in 1935—was in connection with an uncontested election in which the coalition nominees were victors before the polls opened. The corresponding percentage of public participation was 13.5.

TABLE XXVI

COMPARATIVE PARTICIPATION OF THE BAR ASSOCIATION AND THE
GENERAL ELECTORATE IN SPECIFIED JUDICIAL ELECTIONS

Date of Contest	Court	Total Vote in Bar Primary	Percentage Participation		
			Of Bar Association Member- ship	Of Entire Bar	Of Voters in Public Election
1870.....	Circuit.....	366		78.0	
1885.....		304	121.6	21.7	
1887.....	Circuit.....	979	308.6	65.2	
1887.....	Superior.....	579	182.5	38.6	
1889.....	Superior.....	962	249.7	50.2	
1891, June.....	Circuit.....	1,378	331.1	58.0	
1891, Nov.....	Superior.....	1,171	281.5	49.3	
		946	227.4	39.8	
		1,180	283.6	49.7	
1893.....	Circuit.....	1,176	261.3	38.1	
1898, Nov.....	Superior.....	391	57.1	7.5	
1900, Nov.....	Superior.....	371	58.2	8.4	
1902, Nov.....	Superior.....	1,504	216.4	34.0	
1903, June.....	Circuit.....	666	80.2	15.1	46.6
1904, Nov.....	Superior.....	732	81.8	16.4	82.3
1905, Nov.....	Superior.....	756	81.7	16.7	46.6
1906, June.....	Supreme.....	768	76.2	16.9	
1906, Nov.....	Municipal.....	903	90.0	19.6	80.0
1907, Nov.....	Superior.....	741	71.9	16.1	56.4
1908, Nov.....	Municipal.....	608	51.0	13.2	86.1
1909, June.....	Circuit.....	1,059	88.8	22.1	
1910, Sept.....	Municipal primary.....				
1910, Nov.....	Superior.....	1,100	84.6	21.6	79.7
1911, Nov.....	Superior.....	1,380	82.8	26.0	38.6
1912, Sept.....	Municipal primary.....	1,109	60.3	21.1	44.4
1912, Nov.....	Municipal.....	1,466	79.8	27.8	82.6
1914, Sept.....	Municipal primary.....	1,227	62.0	21.5	23.2
1914, Nov.....	Municipal.....	1,436	72.6	25.2	57.1
1915, June.....	Circuit.....	1,536	73.5	26.1	23.1
1916, June.....	Superior.....	1,500	70.0	24.6	20.7
1916, Sept.....	Municipal primary.....	1,350	62.9	22.2	
1916, Nov.....	Municipal.....	1,265	59.0	59.0	56.1
1918, Sept.....	Municipal primary.....	1,286	53.6	20.7	
1918, Nov.....	Municipal.....	1,349	54.0	21.7	
1920, Sept.....	Municipal primary.....	1,468	50.6	23.4	35.3
1920, Nov.....	Municipal.....	1,706	58.9	27.2	88.2
1922, April.....	Municipal primary.....	1,740	60.5	27.4	30.0
1922, Nov.....	Municipal.....	1,609	56.0	25.3	82.1
1923, Nov.....	Superior.....	2,547	81.3	38.8	47.2
1924, April.....	Municipal primary.....	1,900	52.8	28.0	39.0
1924, Nov.....	Municipal.....	2,686	74.7	39.7	73.1
1926, April.....	Municipal primary.....	2,089	51.8	29.2	39.9
1926, Nov.....	Municipal.....	2,500	62.0	35.0	
1927, June.....	Circuit.....	3,089	75.4	40.1	23.0
1928, April.....	Municipal primary.....	2,077	49.6	25.9	57.9
1928, June.....	Superior av. of 3.....	2,200	52.5	27.5	22.8
1928, Nov.....	Municipal.....	2,656	63.2	33.0	74.6
1929, Nov.....	Superior.....	3,065	71.8	37.3	31.0
1930, April.....	Municipal primary.....	2,311	53.2	27.3	43.9
1930, Nov.....	Municipal.....	2,566	59.0	30.3	56.9
1931, Febr.....	Municipal vacancy pri- mary and election.....	1,933	43.7	21.5	37.1
					78.4
1932, April.....	Municipal primary.....	2,543	54.7	28.5	68.4
1932, Nov.....	Municipal.....	2,161	46.5	24.2	
1933, June.....	Circuit.....	2,589	58.4	27.8	48.3
1934, April.....	Municipal primary.....	1,987	45.7	19.9	58.5
1934, June.....	Superior.....	1,845	42.8	18.5	7.7
1934, Nov.....	Municipal.....	2,059	47.7	20.6	81.4
1935, July.....	Superior av. of 2.....	1,421	33.8	13.1	13.5
1936, April.....	Municipal primary.....	2,080	50.7	18.2	74.1

CHART II
COMPARATIVE PARTICIPATION OF CHICAGO BAR ASSOCIATION'S MEMBERS IN BAR PRIMARIES AND OF REGISTERED VOTERS IN THE CORRESPONDING ELECTIONS

(Data in Table XXVI)

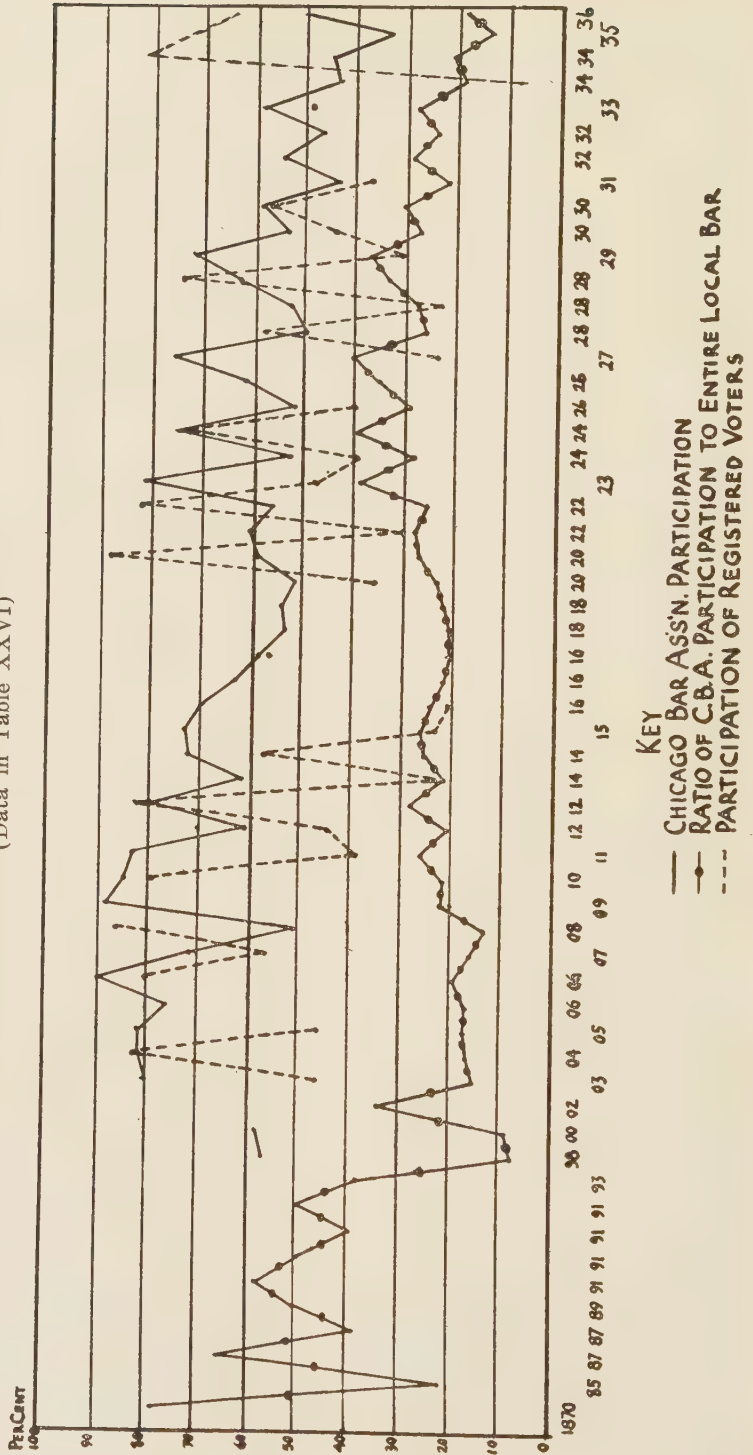


TABLE XXVII
PARTICIPATION IN BAR PRIMARIES COMPARED FOR CHICAGO, CLEVELAND, LOS ANGELES, AND PHILADELPHIA

Association	Date	Bar Membership	Vote	Per cent of Total	Source of Information
<i>Cleveland Bar Association</i>					
Court of Appeals	Nov., 1928	1700	1200	70.6	<i>Journal, Cleveland Bar Association</i> , Vol. II, No. 3 (December, 1928).
Court of Appeals	Sept., 1930	1958	1150	58.8	<i>Journal, American Judicature Society</i> , Vol. XIV, No. 5 (February, 1931).
Municipal judgeships	Oct. 1, 1931	2033	1238	60.9	<i>Cleveland Plain Dealer</i> , October 1, 1931.
Municipal judgeships	Oct. 8, 1931	2033	1410	69.3	<i>Cleveland Plain Dealer</i> , October 9, 1931.
Municipal judgeships	Nov., 1933	2218	945	42.6	Verbal report from secretary, C. B. A.
<i>Los Angeles Bar Association</i>					
Superior Court	July 30, 1926	1800	1046	58.2	<i>Los Angeles Bar Assn. Bull.</i> , Vol. 1, No. 51 (August 5, 1926).
Superior Court	1930	2750	2050	74.6	<i>Journal, American Judicature Society</i> , Vol. XIV, No. 5 (February, 1931).
<i>Philadelphia Bar Association</i>					
Common Pleas Court 1st Ballot	1933	1707	920	53.9	<i>National Municipal Review</i> , XXIII, No. 4, 205-8.
2nd Ballot				51.5	
<i>Chicago Bar Association</i>					
Average participation, 1902-33 inclusive:				64.1	
44 contests Arithmetic mean				60.4	
Median					

were conducted on a Bar-wide basis, we had an average participation of 47 per cent for eleven referenda. When confined to the members of the Chicago Bar Association alone, there was a sharp reduction to 7.5 and 8.4 per cent in 1898 and 1900, respectively. This scanty interest also marked a low point (less than 14 per cent) in the participation in the Bar primary of that proportion of the entire local Bar that was affiliated with the Chicago Bar Association.

From a point of 15.1 per cent in 1903, when the modern era of Association Bar primaries really began, we notice an almost steady increase in the degree of participation until 1927, when a high point of 40.1 per cent was reached in the fight over the coalition ticket for the Circuit Bench in June of that year.

Since 1926 the local Bar has increased more rapidly than the Association, hence we have had a decline in the percentage participation.

The degree of representation for the entire Bar, on the basis of the actual number of licensed attorneys, has been comparatively low—two out of five, at the highest level, or roughly three out of ten on the average. That the representation has been a fairly accurate cross-section of the *active* members of the Bar, however, seems a reasonable conjecture on the basis of the estimates previously presented of licensed lawyers who engage in other business pursuits.

Results of the Chicago Bar Association primaries compared with those under other auspices.—Another test of representativeness conforms to the axiom that two things equal to the same thing, or nearly so, should substantially equal each other.

We have several instances of Bar primaries being conducted by other agencies simultaneously with and for the same purpose as the Association's referenda. How have these votes compared in terms of inclusiveness of voters and identical character of recommendations?

In Table XXVIII three cases of Bar Primaries conducted simultaneously by two separate agencies are presented. Thus in 1906 both the Association and the Lawyers' Association of Illinois conducted polls on the candidates for the Municipal Court and other offices being filled at that time. The Lawyers' Association's poll was Bar-wide. While 90 per cent of the Association's 1,004 members voted, its findings represented only 19.6 per cent of the entire Bar as contrasted with 36.6 per cent representation in the Lawyers' Association referendum. Both polls indorsed the same candidates in 21, or 70 per cent, of the possible instances. Sixteen, or 53 per cent of the Bar Association's and 21, or 70 per cent of the Lawyers' Association's indorsees, were elected. Had the contest been clear-cut between the two major parties, it appears that the

TABLE XXVIII

BAR PRIMARIES SIMULTANEOUSLY CONDUCTED COMPARED FOR DEGREE OF PARTICIPATION AND IDENTICALNESS OF RECOMMENDATIONS*

Date	Court	No. of Offices To Be Filled	Identical Indorse- ments by C.B.A. and	Identicalness of Findings							
				Partisan Indorsements						Number of Indorsed Candidates Elected	
				C. B. A.			L. A. I.			C. B. A.	L. A. I. <i>Record- Herald</i>
				R.	D.	I.	R.	D.	I.		
1906	Municipal.....	30	L.A.I. 21	15	4	11	20	5	5	16	21
1921	Circuit.....	20	L.A.I. 20	...	20	...	20	...	...	20	20
1915	Circuit.....	23	<i>Record Herald</i> 22	12	8	...	12	8	...	19	20

*Key to Bar primaries: C.B.A.—Chicago Bar Association; L.A.I.—Lawyers' Association of Illinois; and Chicago *Record Herald*.

Comparative participation in the respective polls was as follows: C.B.A. 1906 primary 90 per cent of its members or 19.6 per cent of the whole Bar as compared with the L.A.I. Bar-wide primary percentage of 36.6 in the same year. In 1921 the L.A.I. poll registered a 45.8 per cent participation of the entire Bar. In 1915 the respective percentages were: C.B.A. 73.5 of its own members and 26.1 of the entire Bar as compared with 64.7 per cent in the *Record-Herald's* Bar-wide poll.

results would have been almost identical throughout, for the difference is easily accounted for by the single fact that the Bar Association indorsed more independents than did the Lawyers' Association.

In 1921 the result of the two associations' ballots was identical throughout, except that the Lawyers' Association was more representative than the Bar Association's from the standpoint of number of members.

In 1915 the *Chicago Record-Herald*⁹ also conducted a Bar primary on the candidates for the Circuit Court. Its poll was conducted and announced at the same time as the Association's primary. The *Herald's* vote included 64.7 per cent of the local attorneys as against the Association's 26.1 per cent of the whole Bar and 73.5 per cent of its immediate membership. The results were practically identical, 22 out of the 23 indorsements being the same. The partisan indorsements were identical, although the *Herald* averaged one more indorsed candidate elected than did the Association, the percentages being 87 as against 83, respectively.

Though limited in number, these three cases speak eloquently of the representative character of the Bar Association's recommendations.

Why not a vote of the entire Bar?—Having noticed that prior to 1898, and again in 1902, the Association sought to represent the views of the entire Bar, the question naturally arises, Why did the

⁹See issues of May 15-18, 1915, for details.

Association not continue that policy after 1902? The explanation is given in the following statement from an officer of the Association to the writer:

In the first place, the reason we don't open the Bar primary to the whole Bar of the county isn't just a matter of increased expense. It's one of reliability and conscience. We feel that our own members have a sense of responsibility toward the Association that non-members would not have . . . that the vote we get from them is likely to be more thoughtful and painstaking than if we opened it to all comers.

In the second place, we doubt that a vote opened to all the lawyers would be much larger, and therefore much more representative, than one restricted to our own membership. . . .

And finally comes perhaps the most important reason. There are probably 2,500 names in the law directory of attorneys who are not actively engaged in the legal profession and who don't have, and perhaps never had, the professional reaction. Such men soon drift out of the Bar Association, because they find the dues too high and want to be transferred to an inactive list, which we do not have. Such men do not have a professional viewpoint or a practicing lawyer's sources of information; hence to admit them to our vote would be to weaken the very foundation principle of our primary—the claim and conviction that we have special sources of information on judges and thus deserve a hearing.

SUMMARY

Five facts indicate the representative character of the Chicago Bar Association: 1. Its membership now constitutes nearly one-half of the entire local Bar; this proportion would be higher (and would be a more accurate characterization of the situation) if only the *active* practitioners were included.

2. The Association is the largest organization of lawyers and is the only one that now takes an active interest in problems of the local community. From 44 to 64 per cent of the members of the other groups of lawyers (excepting the Cook County Bar Association) are also members of the Chicago Bar Association. This percentage is even larger in the case of the Illinois and national association, which, however, only indirectly concern themselves in Chicago's problems.

3. The Association acts locally for the entire profession in disbarment proceedings.

4. The degree of participation by the Association's members in the Bar primaries has ranged from 34 per cent to 90 per cent. Over a thirty-year period the average for 47 primaries was 63 per cent. This compares favorably with similar participation elsewhere. The Cleveland Bar Association averaged 60 per cent for five primaries; Los Angeles, 66 per cent in two contests; and Philadelphia 53 per cent in two referenda.

5. Three instances of Bar primaries being conducted simultaneously by two different groups have shown a high degree of similarity in results, ranging from 70 per cent identical indorsements in 1906 to 96 per cent in 1915 and 100 per cent in 1921.

PART IV
THE INFLUENCE OF THE BAR

CHAPTER XVII

THE INFLUENCE OF THE CHICAGO BAR ASSOCIATION IN TERMS OF THE NUMBER OF INDORSED CANDIDATES NOMINATED AND ELECTED

RESULTS IN JUDICIAL ELECTIONS

Since the sole purpose of the Chicago Bar Association has been to obtain the nomination and election of candidates whom it has indorsed, it is logical to apply the acid test of political success: how many of its candidates have won at the polls?

Since 1887 there have been 103 contests for judicial office (not including nominating primaries) in which the Association has indorsed candidates. A summary of these contests (some of which occurred simultaneously in the same judicial elections), classified according to the five local tribunals, is presented in Table XXIX and in Chart III.

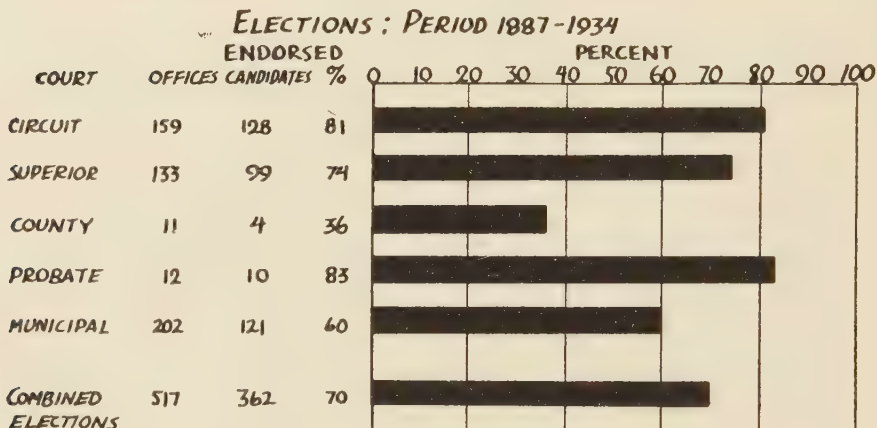
TABLE XXIX

INFLUENCE OF THE CHICAGO BAR ASSOCIATION IN TERMS OF THE NUMBER
OF CANDIDATES INDORSED BY IT WHO WERE ELECTED TO OFFICE,
PERIOD: 1887-1934

Court	Total Number of Elections		Total Number of Offices		Candidates Elected Who Had Been Indorsed by the Chicago Bar Assn.			
					Percentage			
	Type	Total	Type	Total	Type	Total	Type	Total
Circuit.....		23		159		128		81
Regular.....	10		142		115		82	
Vacancy.....	13		17		13		77	
Superior.....		29		133		99		74
Regular.....	14		111		87		78	
Vacancy.....	15		22		12		55	
County.....		11		11		4		36
Probate.....		12		12		10		83
Municipal.....		28		202		121		60
Assoc. Justices and Chief								
Justice, regular.....	15		176		105		60	
Assoc. Justices, vacancy.....	13		26		16		62	
Total.....		103		517		362		70

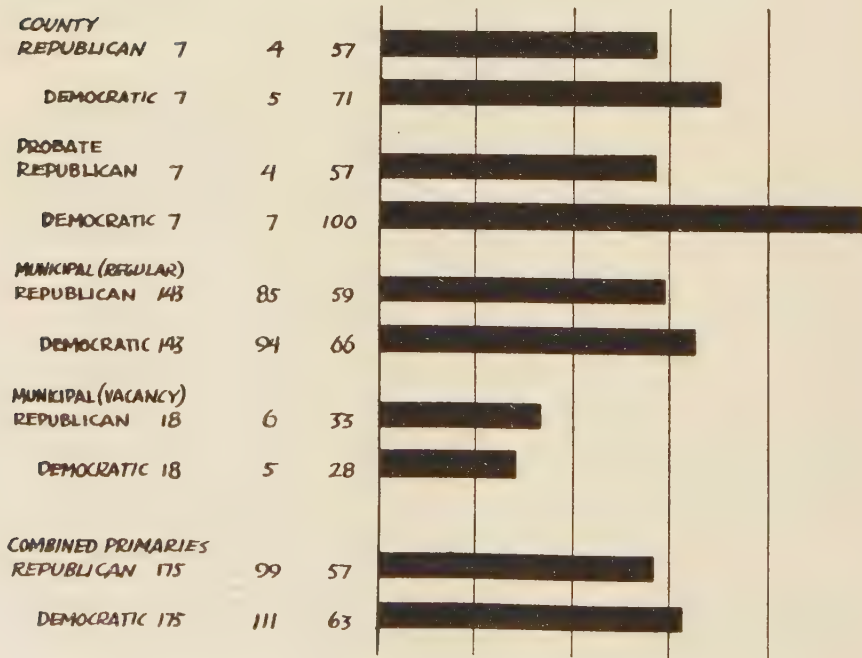
Approximately seventy out of every one hundred judges elected in Chicago and Cook County from 1887 to 1934 were indorsed by the Chicago Bar Association.

CHART III—INFLUENCE OF THE CHICAGO BAR ASSOCIATION
MEASURED IN TERMS OF THE NUMBER OF INDORSED
CANDIDATES ELECTED OR NOMINATED



NOMINATING PRIMARIES

PERIOD : 1910-1934



Considerable variation will be noticed as between the different courts. Both the Circuit and Superior tribunals show the highest percentages, with 80.5 and 74.4 per cent, respectively, of their members thus indorsed. As will be noticed, these figures include vacancy, as well as regular, elections.

The percentage of 60.0 for the Municipal Court includes regular and vacancy elections, with the former predominating. One hundred seventy-six of the 202 offices were filled in the November general elections when national, state, and county officers were to be chosen and local issues overshadowed by national political tides. Considering the disturbing effect of national campaigns and political landslides, it is a matter of wonder that the percentage ratios in these contests are comparatively high.

The indexes for the County and Probate courts evoke surprise by their wide difference. Yet they bear out the general character of the two offices and the opinion that the influence of the Bar is conditioned largely by the political possibilities of the position. The Probate Bench has been less subject to political influence than the County Court. Dealing in the estates of widows and orphans contains too much political "dynamite" to countenance exploitation or mismanagement. The community would not long tolerate an inept handling of the vast trust funds that come within the court's jurisdiction. The pressure on the Probate judge is relieved somewhat by having the assistants to the judge appointed by the elected clerk of the court. To the credit of the party organizations, it can be said that men of unusually high qualifications have been sponsored for the Probate office; and that when an incumbent has sought re-election, a renomination has never been denied him. To what extent the Bar has been responsible for this remarkable record it is difficult to say. Until 1934 the Bar primaries have shown the almost unanimous support of the Association for an incumbent who had administered the office well.¹ It is possible that the party managers were influenced by the Bar's approval of the incumbents' records in office, as evidenced by the Bar primary poll, in bestowing renominations. However, as in 1934, it is improbable that the parties would have given heed.

The opposite is true of the County Court. During a forty-year period the Bar Association has indorsed only two persons who held this office—Orrin N. Carter, Republican, and Edmund K. Jarecki, Democrat.² The fact that six of the ten successful can-

¹From 1900 to 1932 only two men—C. S. Cutting (1900-1914) and Henry Horner (1914-32)—held the probate judgeship. Judge Cutting was indorsed five times; and Judge Horner, four times, failing to receive it only in his first race for the office. Judge O'Connell, his successor, was supported in his first race (1933), but failed to receive the Association's indorsement for the regular term in November, 1934.

²In 1934, however, the Association denied indorsement for re-election to Judge Jarecki, after supporting him in 1926 and 1930. However, he led the entire county ticket in the election returns.

didates were opposed by the Association indicates that the party organizations had a different standard for this position. The control of the office over election administration, and its consequent tie-in with the party organizations, have made the office a key position in which the parties and factions within the parties have fought to fill.

The completeness with which the two major parties have dominated Chicago's judicial elections suggests that the summary averages of Table XXIX be analyzed further into their political party components. This has been done in Table XXX, and the two tables should be read together. Thus, in terms of totals, the Bar Association divided its indorsements for 517 offices between 271 (or 52.4 per cent) Republicans, 216 (or 41.8 per cent) Democrats, and 27 (or 6 per cent) third-party candidates. Of the successful candidates bearing the Bar's indorsement, 190 (or 36.8 per cent) were Republicans and 169 (or 32.7 per cent) were Democrats. Out of this total number only three Bar-indorsed candidates, or six-tenths of 1 per cent of the total, were independents.

TABLE XXX

DISTRIBUTION OF BAR ASSOCIATION INDORSEMENTS AMONG NOMINEES OF THE MAJOR PARTIES AND THE RELATIVE SUCCESS OF CANDIDATES THUS INDORSED, PERIOD: 1887-1934

Court	Number of Offices	Partisan Affiliation of Bar-Indorsed Nominees*				Bar-Indorsed Candidates Elected to Office*			
		Number		Percentage		Number		Percentage	
		Rep.	Dem.	Rep.	Dem.	Rep.	Dem.	Rep.	Dem.
Circuit.....	159	68	84	42.8	52.8	50	75	31.4	47.2
Superior.....	133	68	54	51.1	40.6	53	46	39.8	34.6
County.....	11	7	4	63.6	36.4	2	2	18.2	18.2
Probate.....	12	7	5	58.3	41.2	5	5	41.2	41.2
Municipal.....	202	121	69	59.9	34.2	80	41	39.6	20.3
Total.....	517*	271*	216*	52.4	41.8	190	169	36.8	32.7

*The difference of thirty between the number of offices to be filled and the number of Bar-indorsed candidates in the two major parties is accounted for as follows: twenty-six third-party candidates were indorsed—Circuit Court, six; Superior Court, nine; and Municipal Court, eleven. Indorsements withheld, four. Only three third-party candidates, three Bar-indorsed independent Democrats in the Circuit Court election of 1887, were elected.

Table XXX enables us to make two interesting comparisons that throw light on the influence of the Bar. The first is the extent to which the two parties, in both nominations and elections, have measured up to the standards for judicial candidates as fixed by the Association.

It appears from Table XXX that the Republicans have given greater consideration to the Bar than their Democratic opponents

have done in four out of the five courts. The one exception in which the Democrats made a better showing—the Circuit Court—is noteworthy in view of the importance of that tribunal and of the reputed preponderance of Republicans in the membership of the Association.

A second point to be noticed is the shrinkage in the influence of the Bar between the nominating and election stages. Thus, for the entire list, while 271 Bar-indorsed Republicans were nominated, only 190 were actually elected. This is a shrinkage of 15.6 per cent. Similarly, for the Democrats, the shrinkage was 9 per cent.

If the advice of the Bar Association had been followed in the elections, there would have been no shrinkage. Thus, the lower the percentage differences between the columns in Table XXX, the more did the voters of the two party groups heed the indorsements of the Association. While the two parties are practically even in the totals, the several contests seem to have revealed some significant and illuminating differences.

THE INFLUENCE OF THE BAR ASSOCIATION IN PARTY PRIMARIES

Since 1910, candidates for the County, Probate, and Municipal courts have been nominated under the direct primary. The Circuit and Superior Court nominations for the larger part of this period have been made under the convention system, although a few nominations have been made at primaries. The Bar Association has recommended candidates in each party contest. It is possible, therefore, to ascertain the influence of the Association at this important stage of the selective process.

The primary election, seemingly, should offer a more advantageous opportunity for the Bar Association to impress its views upon the voters than the final contest. The primary is unipartisan. Hence the rivalry and rancor that traditionally mark bipartisan contests should be absent in a primary election. If this were true, the individual candidates would stand or fall on their personal merits. However, the existence of strong local factions within the parties has many times made the primary elections a battleground for control of the official party machinery.³ Many primary elections have therefore been marked by more rancor and atmosphere of contest than the final elections. Where factional differences have been merged, the primary has outwardly become a placid affair in which the political standing armies marshaled by the organizations have nominated the "regular" slates by overwhelming majorities. In fact, few instances are known where a "primary slate" selected by a party organization in a pre-primary

³The party committeemen, in whom the authority is vested, are elected in the party primaries.

caucus has been "broken" in a Chicago primary election. For, as some political wiseacre has well said, the party organizations win primaries, not elections.

Under such conditions one wonders that the Bar Association has been able to make any dent at all in the organization set-ups. The record for the twenty-four year period, for the courts to which the direct primary has applied, appears in Table XXXI and Chart III. While the average difference of 6 per cent between the two parties in the primaries is comparatively small, the fact is notable that the Democrats are higher than the Republican candidates in all but one of the groups analyzed. One explanation of this circumstance may be that until recently the Democrats were the minority party and sought to gain the voters' confidence by nominating candidates who would win the approval of both Bar and public.

TABLE XXXI
INFLUENCE OF THE BAR ASSOCIATION IN PRIMARY ELECTIONS,
PERIOD: 1910-34

Court	Number of Elections	Number of Candidates Nominated	Number of Candidates Seeking Nomination		Candidates Nominated Who Were Indorsed by the Bar			
					Republican		Democrat	
			Rep.	Dem.	Num-ber	Per Cent	Num-ber	Per Cent
County.....	7	7	18	16	4	57	5	71
Probate.....	7	7	19	16	4	57	7	100
Municipal (Regular).....	18	143	416	349	85	59	94	66
Municipal (Vacancies).....	11	18	50	31	6	33	5	28
Total.....	43	175	503	412	99	57	111	63

Particularly distinctive, in view of the circumstances already presented, is the record of the Democrats for the County and Probate Court nominations. The percentages for the Municipal Court also deserve comment, for the indexes are approximately those of the final election. The fact that on the average 63 out of every 100 party nominees for the Municipal Court have failed to win Bar indorsement is striking verification of the reputation (particularly in recent years) of that tribunal as a politically-minded Bench. More eloquent testimony to this same effect is found in the record for the Municipal Court vacancies, where 67 and 72 per cent of the Republican and of the Democratic nominees, respectively, have failed to measure up to the standards of the Bar Association.

IS INCUMBENCY A FACTOR IN THE INFLUENCE OF THE
BAR ASSOCIATION?

Under the four- or six-year term for judges it is natural to find that in every election a large proportion of the candidates are incumbents seeking renomination and re-election. The popular sentiment that a judge who has served satisfactorily is entitled to re-election and the advantage of popularity which an incumbent has over novices make incumbency an important factor to be considered in assaying Bar influence.

From the standpoint of the party organizations, a judge is either an asset or a liability. If he is a liability, he is "eased out." If he is an asset, his prestige, professional reputation, and campaigning ability are capitalized for the party cause. The tradition that good judges should be re-elected generally has been heeded by the parties, for often it has been to their own advantage to do so. It is more than a coincidence that the coalition judicial tickets, both prior to 1900 and since 1917, have been comprised predominantly of incumbents.

To the members of the Bar, on the other hand, the incumbent judge offers a record by which to estimate his fitness for re-election. While the Association endeavors to indorse candidates on the basis of their individual capacity and fitness, it seems inevitable that some "human factors" will enter into its consideration of judges who seek re-election. Have we any evidence that the Association is predisposed one way or the other in the case of incumbents? And likewise, how does its action compare with that of the parties and of the electorate?

In the ensuing tabulations and charts the Chicago judicial elections have been classified according to distinguishing circumstances surrounding each type of contest. Thus the contests for the Municipal Court have been divided into the two partisan primaries and the final election; the Circuit Court elections have been treated as a distinctive series; and the two major series of Superior Court elections—November and June—have been combined into one group. The Circuit and Superior Court data could have been treated as phases of the same series, since the tribunals have concurrent jurisdiction and their elections are all "separate," but for this particular analysis the series were subdivided. Only contests involving groups of candidates have been included in this analysis.

Ratio of available incumbents to the number of offices to be filled.
—The first point to be considered, of course, is to what extent incumbent judges were available to fill the respective offices. Information on this phase is presented in Table XXXII. The data are presented in percentages, and comparisons may be made for each group, as well as between groups. Column 4 indicates the ratio of available incumbent judges to the number of positions to be filled

by election. Columns 6 and 8 give the results of the elections in terms of the division of the positions among incumbents and newcomers. The shrinkage in the percentages from columns 4 to 6 expresses the failure of those judges who sought renomination and re-election at the hands of their constituents.

TABLE XXXII
COMPARATIVE SUCCESS OF INCUMBENTS AND NEWCOMERS IN JUDICIAL ELECTIONS

Court Contest (1)	Number of Positions To Be Filled (2)	Incumbents Seeking Re-election		Successful Candidates			
				Incumbents		Newcomers	
		Num- ber (3)	Per Cent (4)	Num- ber (5)	Per Cent (6)	Num- ber (7)	Per Cent (8)
Municipal Court:							
Republican primary.	118	83	70	75	64	43	36
Democratic primary	118	43	36	37	31	81	69
Election.....	137	128	93	73	53	64	47
Circuit Court.....	133	122	92	104	78	29	22
Superior Court.....	88	79	90	66	75	22	25
Composite.....	594	455	77	353	59	241	41

The three series of *elections* show a significant, almost typical, uniformity in the ratio of incumbents seeking re-election—93, 92, and 90 per cent for the Municipal, Circuit, and Superior courts, respectively. The difference in shrinkages as between the Municipal and Circuit-Superior contests is accounted for, undoubtedly, by the fact of holding the Municipal elections at a time when national political tides more directly affect local issues (this situation is further analyzed in Table XXXV). The relative sameness of the Circuit and Superior Court contests perhaps more nearly represents the local tendency to re-elect judges who desire to continue their career on the Bench. Thus it appears that for the higher courts approximately eight out of every nine candidates who seek re-election are successful, as against five out of every nine incumbents on the lower Bench. On the average, eight out of every ten incumbents seek to be returned to the Bench, and only six of them realize their wish.

The fate of incumbents who sought re-election.—The next point in this analysis is: What stand did the Bar Association take regarding those incumbents who sought re-election? Information on this phase is presented in Table XXXIII and shows (1) the success of the incumbent candidates at the polls; (2) the percentages of both winners and losers who were indorsed by the Association; and, for the final elections, (3) the partisan division of these same groups of candidates.

From this table it appears that the Association exercised considerable discrimination in bestowing its indorsements upon incumbents. In no group did it indorse all of those judges who sought re-election. In fact, the lack of qualified material ranged from 18 per cent in the cases of the Circuit and Superior courts to 25 per cent in the case of the Republican Municipal Court primaries. On the average, the Association indorsed only eight out of every ten incumbents who desired to remain on the Bench. Furthermore, in four of the five types of contests, the Association could not find enough incumbents who measured up to its standards to equal the number of judges who were eventually re-elected. It appears that had it merely indorsed incumbents as such, and on their chances of political success the number of indorsed incumbents would have been larger than those re-elected. Such was the case in the Municipal Court elections and, owing to the same circumstances, in the composite of elections. But, as previously pointed out, a special situation prevailed in the Municipal judicial elections, resulting in many worthy incumbents falling under the ban of blind partisanship.

The fact that in every type of contest many unindorsed incumbents were re-elected shows the limited influence of the Association in seeking to obtain the re-election of judges who met its standards and, conversely, of preventing the re-election of those whom it considered unworthy.

Relative emphasis by the Bar Association, and by the parties, upon incumbency.—The comparative importance of incumbency as a factor in Bar Association indorsement may be shown by comparing the actual outcomes of the judicial elections with the choice of material which would have resulted had the selection been intrusted solely to the Bar Association. In Table XXXIV information on this point is presented. The selections of the Association (as determined by its indorsements) and the choices of the parties (as indicated by the results of the elections) are compared in terms of the percentages of incumbents and newcomers in the various contests and in the proportion of each indorsed by the Association.

The records of the Association and of the parties may be contrasted by comparing the corresponding columns in the two sections of the table. Thus, in the Municipal Court primaries, the parties chose more incumbents than the Association would have favored. The same is true of the Circuit and Superior Court elections. In the Municipal Court elections, however, the Association favored the re-election of incumbents in the ratio of 74 to 55 actually chosen by the parties through the electorate. It should be noticed that of the 55 successful incumbents 9 were re-elected in spite of Bar Association opposition.

TABLE XXXIII
FATE OF INCUMBENTS SEEKING RENOMINATION OR RE-ELECTION IN TERMS OF BAR ASSOCIATION INDORSEMENT AND
PARTISAN ALIGNMENT

Incumbents Seeking Renomination or Re-election														
Court Contest	Total	Elected				Defeated								
		Bar Indorsed		Not Indorsed		Bar Indorsed				Not Indorsed				
		Rep.	Dem.	Rep.	Dem.	Rep.	Dem.	Ind.	Rep.	Dem.				
Municipal Court		57			18				5					
Republican primary	83 100	69			22				6				3	
Democratic primary	43 100		32			5				2				
Election	128 100	45	16			12				5				4
		35	13											9
Circuit Court	122 100	46	46		7	5			22	17			12	4
		38	38		5	4			17	13			9	3
Superior Court	79 100	33	24		6	6			1	4		3	9	1
		42	30		5	5			1	3		2	7	1
Composite of elections only	329 100	124	86		6	3			7	1			4	1
		37	26			4			9	1			5	1
					19	14			30	22		3	25	6
					6	4			9	7		1	8	2

Relation of incumbency and Bar Association indorsement in the Municipal Court elections.—The special situation that has prevailed in Municipal Court elections provided an excellent opportunity to trace what relationship, if any, existed between success at the polls and the two factors of incumbency and of Bar Association indorsement. The special situation in question is indicated by the facts (previously shown in this discussion—see Table XXXIII) that while in Municipal Court elections there were enough incumbents to fill 93 per cent of the places, only 53 per cent of this number successfully negotiated the dual hurdles of party primary and general election; and, furthermore, that while the Association would have indorsed 100 (or 78 per cent) of the 128 incumbents who sought re-election to the Municipal Court, actually only 73 (or 57 per cent) of these incumbents were re-elected and only 61 (or 48 per cent) of the original number who were successfully re-elected had the Association's indorsement.

The circumstance that no judge not affiliated with either major party has been elected to the Municipal Court enables us to analyze graphically the relationships between the several factors suggested. In Table XXXV and Chart IV the data for the 1906 and ensuing elections have been presented to show the degree of party success, in terms of the percentage of candidates who were incumbents, and the percentage of those indorsed by the Association.

The two bars opposite each election date in Chart IV should be read together and with reference to its location on the vertical grid. The top member of the pair of bars represents incumbency, and the length of the shaded portion between each vertical line shows the percentage of incumbents. The lower bar depicts the percentage of each group which was indorsed by the Association. Each bar has a total value of 200 per cent (100 per cent for each party), and the heavy line connecting all of the bars divides the candidates of the two parties into equal segments.

Since the center section represents victory at the polls, the various proportions of party candidates, Bar-indorsees, and incumbents may be deduced from the proportions of the paired bars that fall in this area. Similar readings may be made for the sections of the paired bars that fall into the two "defeat" areas on either side.

The relation of incumbency and Association indorsement may be inferred by contrasting the black portions of each bar that lie opposite each other. Notwithstanding the tendency of indorsement to follow incumbency—which is obvious, since on the average nearly three-fourths of the Bar-indorsed candidates were incumbents—there was considerable variation. This ranged from complete coincidence in 1910 to only 42 per cent concurrence in 1930.

TABLE XXXV

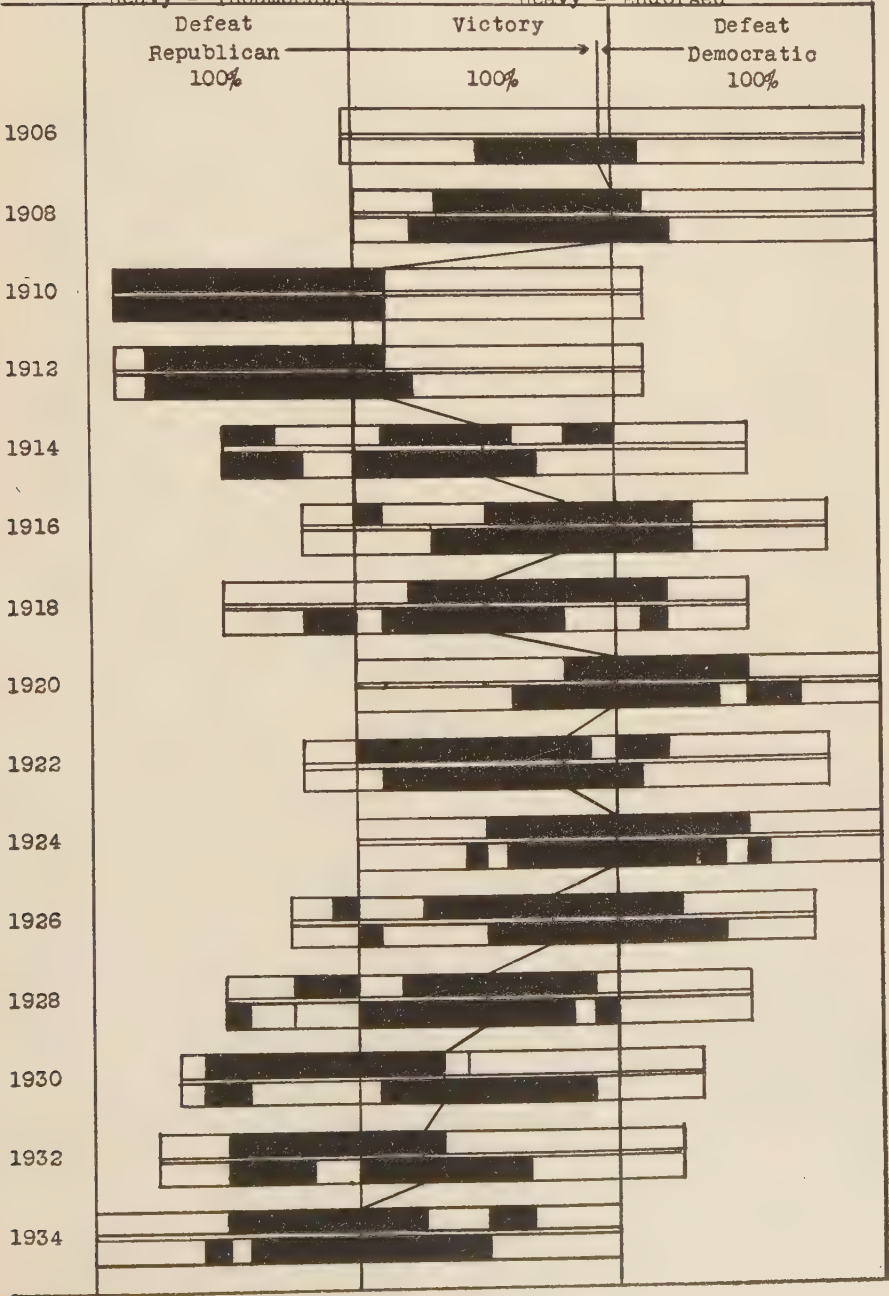
MUNICIPAL COURT ELECTION RESULTS ANALYZED TO SHOW THE RELATIONSHIPS OF BAR ASSOCIATION INDORSEMENT AND INCUMBENCY TO SUCCESS AT THE POLLS

CHART IV

MUNICIPAL COURT ELECTIONS ANALYZED TO SHOW COMPARATIVELY PARTY SUCCESSES AND DEFEATS AND THE PERCENTAGE DISTRIBUTION OF BAR ASSOCIATION INDORSEMENTS AMONG INCUMBENTS AND NEWCOMERS

(Data from Table XXXV)

Key: Top Bar—Candidacy Lower Bar—Bar Ass'n Indorsement
Heavy = Incumbents Heavy = Endorsed



The effects of national partisan tides.—The number of contests in which Association-indorsed incumbents have been defeated indicates a factor stronger than either of these intervened to control the result of the contest. The shifting of the shuttle across the grid in Chart IV shows the partisan trends in the Municipal Court elections. Accordingly, the information on the chart must be studied with the trends of national partisan tides in mind.

Thus the first election in 1906 was held on a rising Republican tide. The Republican organization, it will be recalled, purposely fixed the election at a time to increase the likelihood of electing its candidates to the new tribunal. The Republican sweep was assisted by the Independence League ticket. The result, however, was a 96 per cent victory for the Republicans. Two years later the Taft victory resulted in another Republican landslide. In the county election of 1910 the local tide turned Democratic, with a corresponding result in the Municipal Bench. The Wilson victory in 1912, with a local Progressive ticket helping to weaken the Republican ranks, was again accompanied by an overwhelming Democratic landslide in the Municipal Court.

Attention may be called to the high mortality among Republican incumbents in both the 1910 and 1912 contests. The Democratic victors in these contests were necessarily newcomers, for only one Democrat had been elected for a two-year term in 1906, and he had been defeated for re-election in 1908. No Democratic incumbents were thus eligible for re-election until 1916.

The Progressive influence continued through 1914, and undoubtedly helped to divide the vote of the regular parties in that year. The year 1916 presented a result ostensibly against the general tide, but locally it reflected the resurgence of Republicanism which, after a slight recession in 1918, was to dominate local politics until after 1924.

The local situation in 1916 presented the following political mixture: William Hale Thompson, Republican, had been elected mayor in April, 1915. In the Circuit Court election of June, 1915, the Republicans won fourteen of the twenty places. But a year later the Democrats made a complete sweep of the June Superior Court election. Then, in the November presidential election, Charles Evans Hughes, Republican, carried Chicago against Wilson by 26,000 votes and Lowden (Republican) outran Dunne (Democrat) for governor by 386 votes. Hoffman, Republican candidate for coroner, had a lead of 75,000 votes, as did the Republican candidates for the clerkships of the Circuit and Superior courts. On the other hand, Maclay Hoyne, Democrat, won the state's attorneyship by 50,000. Thus with the national and state tickets being so evenly divided in Chicago, and with the local tide preponderantly Repub-

lican, it was not surprising that the Republicans elected eight out of the ten Municipal judges in that year.

The strong national Republican tides of 1920 and 1924 are reflected in the complete sweep of the Republican Municipal Court tickets in those years. The gradual ascendancy of the Brennan-Cermak Democracy from 1926 forward, culminating in 1932, is also evident in the chart. During this period there was a growing unity among the Democrats and an increasing factionalism among the Republicans. The even division of the offices in 1928 again reflects the mixed nature of local politics, for Chicago gave Hoover and Emmerson Republican majorities, but polled a 77,000 Democratic majority for the United States senatorship. In 1930 and 1932 the rising Democratic tide is also indicated. It is a matter for wonderment that the Roosevelt landslide in 1932 (Roosevelt led Hoover by 149,000 in Chicago) did not engulf all of the Republican incumbents, as did the Democratic tide in 1934. The fact that several did survive and that they were also indorsed by the Association suggests that incumbency, plus Association indorsement, may have some bearing upon the success of a candidate seeking re-election to the Municipal Court. When the local bipartisan balance is fairly even, this factor has an opportunity to register in the result. Exceptional cases may also go against the general trend, but when this balance is tipped to either political extreme the national political tide usually overwhelms all other factors and carries the favored ticket to success.

It seems obvious from Chart IV that if the Municipal Court elections were freed from the influence of these political tides the factors of incumbency and Association indorsement would operate in at least as large a measure as they do in the cases of the Circuit and Superior Court contests.

Influence of the Bar in the cases of incumbent candidates definitely opposed by the Association.—We have seen that a considerable proportion of incumbents are renominated and re-elected when they lack the indorsement of the Bar Association. This is perhaps not surprising under the system of political domination which has fastened itself upon Chicago elections. The matter assumes importance, however, when we consider that in many such instances the candidates not merely lacked indorsement, but were definitely characterized as unqualified or even as unfit to hold judicial office.

In general, the Association's plan is to *indorse*, rather than oppose, candidates. The reports issued by the Committee on Candidates, however, contain characterizations which definitely express a view as to the candidate's qualifications to be a judge. These descriptions are circulated chiefly among the members of the Asso-

ciation to guide them in voting in the Bar primary. The reports become public property, however, through publication in the press.

The disqualifying characterizations fall into two sharply defined groups: (1) those which declare that the candidate lacks experience, and (2) those which flatly pronounce the candidate as unfit for the Bench. This second group of statements becomes especially significant in cases of incumbents who seek re-election or promotion to higher courts.

The tendency of Chicago voters to disregard impartial recommendations when the candidate is "politically available" is illustrated by the record of the 67 candidacies of 16 individuals. In each candidacy the Bar Association had turned "thumbs down" on an incumbent judge seeking re-election. The noteworthy fact is that there were only 14 defeats in the entire list. Several of these occurred in the party primaries, indicating that the candidates had "lost caste" with their sponsors. Several defeats were due to adverse party landslides. But an amazing circumstance is that the most successful candidacies were those in which incumbent judges who had long been on the Bench were flatly declared to be unfit for such a public trust.

In one case a candidate withdrew, in part as a result of Bar influence. The whip hand in this instance, however, was held by the opposite party in the negotiations for a coalition ticket. The candidate's ill repute, and criticism of his conduct on the Bench, appear to have put a political "jinx" on him. But this case is more than offset by two other instances in which the Bar Association, by negotiation, sought to accomplish the same result. The political alignments were such, however, that instead of impeding their re-election, the candidates capitalized the Association's opposition and thereby received increased notice in the press. They evidently subscribed to the publicity policy of the Cleveland judge who declared "every knock is a boost!"

SUMMARY

Elections.—Approximately seventy out of every one hundred judges elected in 103 contests in Chicago from 1887 to 1934 were indorsed by the Chicago Bar Association. The percentages for the several series of judicial elections were: Circuit, 80.5; Superior, 74.4; Probate, 83.3; County, 36.4; Municipal, 59.9.

Primaries.—In 43 Chicago party primary elections, nominating for 175 judicial offices during the period 1910-34, 57 out of every 100 Republican candidates and 63 out of every 100 Democratic candidates actually nominated had been indorsed by the Bar Association.

Relation of incumbency to Bar influence.—On the average, eight out of every ten incumbents sought to be re-elected, and only six

of them realized their wish. In the higher courts approximately eight out of every nine incumbent candidates were re-elected, as against five out of every nine incumbents re-elected to the lower bench.

On the average, 80 out of every 100 incumbent candidates received the Bar Association's indorsement, and only 63 of these were re-elected. The facts that 20 per cent of the incumbent candidates failed to receive the Association's indorsement, and that 10 per cent of the incumbents successfully re-elected lacked Bar indorsement, indicate that the factor of incumbency was not the paramount consideration in determining the Bar Association's recommendations.

The Bar Association placed less emphasis upon incumbency than did the party organizations.

Owing to national political landslides, only 53 per cent of the incumbents who sought re-election successfully negotiated the November polls. (The incumbents who ran would have filled 93 per cent of the places.) The Association indorsed 78 per cent of the incumbent candidates, but only 48 per cent of these were re-elected.

The inability of Bar influence to prevent the re-election of unqualified incumbents is shown by the fact that in a list of 67 such candidacies of 16 different incumbents, there were only 14 defeats, despite the fact that the Association vigorously opposed their re-election.

CHAPTER XVIII

THE INFLUENCE OF THE BAR ASSOCIATION IN TERMS OF THE NUMBER OF VOTES AFFECTED

Thus far we have endeavored to indicate the influence of Bar activity in terms of the number of candidates elected or defeated. This measure of success depends upon an *absolute* standard of achievement—the number of *candidates* to be elected. Another measure of influence is the number of *votes* which were apparently cast in conformity with the Association's recommendations. This is a measure of *relative* accomplishment.

An indication of the number of votes thus affected will be helpful in tracing Bar Association influence from another standpoint. Does the Bar Association control a minority holding a potential balance of power between the major political parties? Obviously, if it could control enough votes to override normal party pluralities, and thus determine the fate of candidates, its importance would be disproportionate to the number of votes thus influenced. The threat of withholding Bar support would perhaps induce the party organizations in the first instance to sponsor only candidates measuring up to Bar Association standards.

IS THERE A BAR BLOC?

To answer this question, the election returns have been analyzed for all of the contests since 1887 for which the essential information is available. In so doing, care was taken to remove, as far as possible, the factors of incumbency and party landslides. Otherwise, successes really attributable to these factors might have been ascribed to Bar Association influence, and vice versa.

As against this index of Bar influence, we need also, for purposes of comparison, the extent of party preponderance in terms of votes in each contest. This plurality in each instance represented the handicap which the Bar Association was attempting to overcome. The personal popularity of individual candidates is an important factor in determining their final standing. Hence it enters into the problem of approximating the influence of the Bar Association, but is not easily or accurately measurable and has therefore not been dealt with separately in this study.

The two measures of Bar influence and party preponderance, expressed in votes and percentages of the total vote cast, are presented in Table XXXVI, together with indexes of participation in the election, an "index number" ratio of Association influence, and the number of Bar-indorsed candidates elected in each contest.

Appendix I (beginning on page 367 explains the method of computation. These indexes are listed in such a way that they can be contrasted and evaluated.

Several suggestive contrasts appear in the table. Notable examples of Bar influence were the elections of 1887, 1911, 1923, 1927, and 1928, in the Circuit and Superior group, and 1922 and 1928 in the Municipal Court contests.

Two trends are indicated. From the 30 per cent Bar influence in 1887, there was a decline to 2 per cent and less in 1906 and later. This reflects the rising power of the party machines and the lessened activity of the Bar Association in judicial selection. Another trend is indicated in the decade culminating in 1933, increased activity in judicial elections being reflected in periodic drives and intensive publicity.

There was a rise in the index of Bar influence subsequent to the intensive drives. For example, higher indexes in 1922 and 1923 followed the campaign of 1921; also in 1928 and 1929 the indexes reflect the two vigorous campaigns of 1927 and 1928. The results in 1932 and 1933 may perhaps be attributed in part to the tremendous amount of favorable publicity received by the Association in its prosecution of the Sanitary District disbarment proceedings and its investigation of receivership racketeering. Conversely, unfavorable publicity, as in its opposition to Judge Lyle in 1930, was reflected in lessened influence (4.2 per cent against 6.2 per cent in 1928 and 7.3 per cent in 1932.)

Since 1933 another trend has been evident. The success of bipartisan coalition, which is actually a breakdown of the bipartisan election system, together with the overwhelming effect of national landslides, has led the Association practically to discontinue its participation in judicial elections. It took almost no part in the June, 1934, contest, and practically none in the November, 1934, campaign. The result in the latter campaign was the shrinking of the Bar bloc to 2.3 per cent—the lowest since 1918.

The index of 30 per cent in 1887 perhaps supplies one reason why the party leaders in the early days listened to the Bar. On the other hand, the lowered percentages since that time perhaps indicate why the parties have seldom taken the Association's efforts as a serious threat to their domination. A 30 per cent influence in 1920 or 1924 would have beaten even the Republican landslides in those years. However, it is ineffectual against modern coalition, even though, as in 1927 and 1928, the Bar adherents had a chance to express themselves for a group of Bar indorsees on a special ticket.

In five out of six recent elections—two in 1928, one each in 1927, 1932, and 1933—the Association is shown as having influenced from 60,000 to 100,000 votes. In the last two it influenced 80,000

TABLE XXXVI
ESTIMATES OF BAR INFLUENCE AND PARTY PLURALITIES IN SPECIFIED JUDICIAL ELECTIONS
(See Appendix I, page 367, for Method of Computation)

Year	Percentage of Registered Electors Polled	How Large a Party Plurality Was the Bar Association Attempting To Overcome?		What Percentage of the Total Vote on Judges Was Included in This Party Plurality?	Votes Apparently Influenced by the Bar Assn.		Measures of Bar Association Influence		
		Party†	Votes		Average Number of Votes	Percentage of Total Vote	"Index Number" Basis	Percentage of Association-Indorsed Candidates Elected	Ratio of Votes Influenced To Votes Needed§
Circuit Court:									
1887.....	.....	C	13,716	13.7	30,767	30.8	324.0	100	225.
1891.....	.....	C	23,209	39.6	5,393	9.2	131.5	91	23.
1903.....	47	D	16,997	9.8	11,657	6.7	116.5	71	68.
1909.....	43	R	4,832	2.8	-11,136*	-6.4	88.7	57	-228.
1915.....	39	R	18,614	9.8	8,638	4.6	112.7	71	47.
1927.....	23	C	170,111	58.0	99,144†	33.7	120.8	85	58.
1933.....	48	C	316,227	45.5	81,377	11.7	136.5	69	26.
Superior Court:									
1898.....	90	R	3,022	1.1	1,060	0.4	100.7	83	36.
1904.....	92	R	80,780	21.8	6,932	1.9	105.7	67	9.
1910.....	88	D	20,768	6.4	2,240	0.7	101.4	17	11.
1911.....	35	D	10,670	6.0	12,820	7.2	118.2	90	120.
1916.....	37	D	28,280	16.4	337	0.2	97.2	50	1.
1923.....	47	R	13,176	3.1	42,348	9.9	124.4	90	319.
1928.....	23	C	190,963	61.2	96,593†	31.0	121.2	50	50.
1929.....	31	C	171,193	36.3	31,606	6.7	116.2	80	18.
Municipal Court: Series "A"									
2-year term in 1906:									
1906.....	87	R	27,778	10.4	5,439	2.0	107.9	67	19.
1908.....	94	R	48,473	13.4	6,573	1.8	102.5	78	13.
1914.....	85	D	4,996	1.3	16,699	4.2	113.4	70	323.

TABLE XXXVI—Continued
ESTIMATES OF BAR INFLUENCE AND PARTY PLURALITIES IN SPECIFIED JUDICIAL ELECTIONS
(See Appendix I, page 367, for Method of Computation)

(See Appendix 4, Page 609, for further details.)

Year	Percentage of Registered Electors Polled	How Large a Party Plurality Was the Bar Association Attempting To Overcome?					What Percentage of the Total Vote on Judges Was Included in This Party Plurality?	Votes Apparently Influenced by the Bar Assn.		Measures of Bar Association Influence		
		Party†	Votes	Average Number of Votes	Percentage of Total Vote	"Index Number" Basis		Percentage of Association-Indorsed Candidates Elected	Ratio of Votes Influenced To Votes Needed\$			
Municipal Court:												
Series "A"												
2-year term in 1906:												
—Continued												
1920.....	95	R	207,204	29.1	27,814	3.9	112.1	40	13.			
1926.....	87	R	46,375	6.9	28,045	4.2	108.6	58	61.			
1932.....	95	D	109,766	8.9	88,813	7.3	116.2	58	82.			
Series "B"												
4-year term in 1906:												
1906.....	87	R	30,578	12.1	3,573	1.3	105.0	56	11.			
1916.....	94	R	32,256	7.7	18,947	4.3	109.5	70	56.			
1922.....	89	R	18,041	2.9	29,834	4.8	110.0	90	165.			
1928.....	95	R	323	0.03	64,909	6.2	113.3	92	20,096.			
1934.....	81	D	289,790	27.7	27,067	2.3	106.5	50	8.			
Series "C"												
6-year term in 1906:												
1906.....	87	R	28,313	10.1	3,336	1.2	105.0	33	12.			
1912.....	93	D	9,506	2.5	17,904	4.7	108.2	11	188.			
1918.....	86	R	1,108	0.4	6,772	2.2	105.0	70	550.			
1924.....	93	R	179,843	21.4	21,985	2.6	105.4	50	12.			
1930.....	74	D	48,010	6.0	33,725	4.2	109.1	75	70.			

*Due to factor of extraordinary personal popularity of certain incumbents opposed by the Association.

†Figures for 1927 and 1928 represent the average vote of candidates directly supported by the Association.

‡Symbols: R, Republican; D, Democratic; C, Coalition of Republican and Democratic parties.

§Votes apparently influenced, divided by number of votes in party plurality to be overcome.

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TABLE XXXVII

ELECTION RANKING OF CANDIDATES OPPOSED BY THE BAR ASSOCIATION IN MUNICIPAL COURT ELECTIONS, 1906-34

Place	6-yr. q*	4-yr. q	2-yr. q	1908	1910	1912	1914 (Winners)	1916	1918	1920	1922	1924	1926	1928	1930	1932	1934	Place
1st.....	q	q			x	x												1st
2d.....					x	x												2d
3d.....			x		x	x												3d
4th.....				x	x	x							x				x	4th
5th.....					x	x		x		x					x		x	5th
6th.....	q	q			x	x		x		x						q		6th
7th.....	x	x	q		x	x		x		x			x			q		7th
8th.....	q	x			x	x		x		x			x					8th
9th.....	x			q		x										q	x	9th
10th.....	q				x					q	x					x		10th
11th.....		x						x				x		x				11th
12th.....		q		x				x			q	q			x		x	12th
13th.....	q	x									q		x					13th
14th.....	x	q		x					x		x		x	x		x		14th
15th.....	q	x		q					q		x				x			15th
16th.....	x	x		x				x	q		q				x			16th
17th.....	x	x		x				x	q						x			17th
18th.....	x	x		q				x			x							18th
19th.....		x						x	q		x							19th
20th.....								x										20th
21st.....	q		x					x			x						x	21st
22d.....		x																22d
23d.....		x	q					x					q				x	23d
24th.....	q	x	Indepen-					x										24th
25th.....		x	dent															25th
26th.....		x	q Ticket									q						26th
27th.....	q	x	q 1906									x						27th
.....	x	x	x)				(Losers)											.....

*q approved as qualified by the committee, although unable to win indorsement in the competition of the primary.

persons or more to vote for candidates all down the line. The contests of 1927 and 1928, when the Bar-sponsored candidates had separate columns on the ballots, indicated that five electors will vote for a separate Bar ticket for every two that will take the trouble to pick out indorsed candidates scattered among the lists of the regular parties. On such a basis a bloc of 80,000 voters would be increased to 200,000—a figure which the party pluralities have exceeded only three times (1920 and 1934 Municipal and 1933 Circuit) in this list of more than thirty contests.

The table demonstrates the common-sense conclusion that efforts to beat bipartisan coalition are hopeless.

Relative ranking of Bar-indorsed candidates.—The relative ranking of candidates indorsed by the Association and those not so supported gives graphic evidence of Bar influence. Table XXXVII presents this information for the Municipal Court contests.

Unindorsed candidates, it will be noticed, tend to sink to the bottom of both winning and losing brackets. No unindorsed candidate has led the winning slate for the Municipal Court since 1910. The tendency for Bar-indorsed candidates to rise to the top is true for both special and general elections.

Confirming this finding is the fact that straight tickets elected by a single party have been exceptions, rather than the rule. No such ticket has been elected to the Circuit Court since the Bar primary started; nor to the Superior Court since 1916.¹ In the Municipal Court straight party victories occurred in the national land-slides of 1908, 1920, 1924, and 1934.

When a losing party's candidate breaks through into the ranks of the winners, it is a three to one bet he has Bar indorsement.

In 1933 there was a margin of more than 30,000 votes *in each party* between the *lowest* Bar man and the *highest* unindorsed candidate. In 1932 it was 42,000 in the Democratic party and 45,000 in the Republican ranks. *All* Bar men have led *all* non-Bar men, within the same party, twenty-four different times since 1906.

If one could eliminate the highly variable factor of personal popularity, it is clear that every election would show a high degree of grouping among the indorsed and the unindorsed candidates with a considerable gap between.

¹In 1921 the Democratic ticket won the Circuit Court contest, but it contained Republican as well as Democratic candidates.

CHAPTER XIX

THE INFLUENCE OF THE BAR IN TERMS OF RESULTS IN VARIOUS CONSTITUENCIES

The extremely diversified character of the various voting constituencies in Chicago and Cook County raises the interesting and important question of the degree of influence wielded by the Association in different sections.

Vast differences of race, culture, social and economic status, and political viewpoint will be found among the voting subdivisions, and all of them have a subtle relation to the attitudes of the respective communities toward the Bar Association and toward its efforts to influence the selection of well-qualified judges. An even more important factor is what we may term the degree of political thralldom characteristic of each community and of its counterpart, the perfection of party organization in the district.

Such factors as the reader clientèle of the various metropolitan newspapers, and the personal prestige of the individual candidates in the several localities, also contribute to the diversification.

If it were possible to analyze the election returns exhaustively in the light of such information some instructive explanations could be offered of Bar influence, or the lack of it, in various constituencies. In the present study we have sought only to indicate the diversity of attitude as between communities in terms of the votes cast for candidates indorsed by the Association and those not so indorsed.

Three contests, involving varying degrees of several important factors in judicial elections, were selected for detailed analysis—the Superior Court election of June 4, 1928, and the Municipal Court elections of November 2, 1926, and November 6, 1928. The percentage of participation of voters ranged from 23 per cent for the Superior Court contest to 87 and 95 per cent, respectively, for the Municipal Court contests. The Superior Court contest involved only the election of judges, whereas the others were accompanied by the distractions of general campaigns. Coalition dominated the Superior Court election, whereas the Municipal contests were straight partisan fights. In the first contest, the issue of Association indorsement was clear-cut, for the Association made a strenuous campaign for its own slate, one-half of which ran under the coalition banner. In the other two contests, the Association indorsed men on both tickets. Perhaps the most noteworthy contrast is the actual success of Bar-indorsed candidates. In the Superior Court contest only 50 per cent of those elected were thus

supported; in the 1926 Municipal contest, 58 per cent, and in the 1928 instance, 92 per cent of those elected had been indorsed.

In this analysis, as in the previous chapter, it was desired to eliminate as far as possible the influence of party affiliation and incumbency. The election figures for each ward were therefore grouped, averaged, and compared according to the method of the "index number" previously explained.¹ The ratios for the three contests, together with the actual percentage of Bar-indorsed candidates "elected" in each ward, are presented in Table XXXVIII.

The two sets of figures in Table XXXVIII may be compared, but in the interest of accuracy should be considered separately. The percentages record the *actual* outcome of the elections in each ward from the standpoint of the Bar Association. The index numbers, on the other hand, represent the result after the factors of party plurality and incumbency have been neutralized. The percentages show results in terms of candidates, while the index numbers express the amount of support the Bar-indorsed candidates received in terms of the aggregate vote for those not indorsed, with disturbing factors neutralized. The index numbers are therefore a more accurate gauge of Bar Association influence.

Variation between wards in the same election.—Both sets of figures in Table XXXVIII show the widespread variation between voting districts in the same election. The Municipal Court election in 1926 (Chart V), for example, ranged from 25 to 92 per cent of candidates "elected," and from 85.8 to 136.6 in relative emphasis, and a somewhat less divergence (42 to 92 per cent and 98.8 to 138.1 index numbers) was recorded in the similar contest for 1928. But an even greater variation occurred in the Superior Court contest—a 50 per cent range in one set and from 87.9 to 183.2 or nearly 100 points of difference in the index numbers.

The question that interests us is: Was the activity of the Chicago Bar Association a factor in producing the differences between wards? It would be foolish to assume that these differences are due solely to the Association's efforts during a campaign. An election result reflects many factors, some of which have been enumerated—the alignment of the party organizations, the intensity of the campaign, the personal popularity of the candidates, the racial, nationalistic, and religious composition of the community, the economic status, the educational level, to mention only a few of the many widely recognized considerations that motivate voters in casting their ballots.

On the other hand, the publicity campaigns of the Association and its tradition of nonpartisan recommendations have been positive factors in each judicial contest. Some definite factor is obvi-

¹For method see n. C on p. 369.

TABLE XXXVIII
RELATIVE SUCCESS OF BAR-INDORSED CANDIDATES IN EACH WARD IN SELECTED JUDICIAL ELECTIONS
PERCENTAGE OF INDORSED CANDIDATES "ELECTED," AND INDEX NUMBER OF BAR INFLUENCE, WITH FACTORS OF PARTY
PLURALITY AND INCUMBENCY ELIMINATED, FOR EACH WARD

Ward	Percentage of Indorsed Candidates "Elected" on Ward Returns			Index Number of Bar Influence			Ward	Percentage of Indorsed Candidates "Elected" on Ward Returns			Index Number of Bar Influence		
	Municipal Court		Superior Court	Municipal Court		Superior Court		Municipal Court		Superior Court	Municipal Court		Superior Court
	1926		1928	1926		1928		1926		1928	1926		1928
	1926	1928	1928	1926	1928	1928		1926	1928	1928	1926	1928	1928
1.....	67	58	50	104.0	111.7	98.5	26.....	67	42	50	95.0	98.8	104.0
2.....	33	58	50	100.2	101.7	103.8	27.....	33	83	50	103.7	104.1	100.0
3.....	33	58	50	104.9	107.7	109.0	28.....	67	42	50	104.7	108.1	114.5
4.....	33	58	50	116.5	119.8	125.9	29.....	75	42	50	98.7	107.2	110.1
5.....	42	67	100	136.6	138.1	183.2	30.....	67	42	50	103.5	108.1	111.1
6.....	33	92	50	126.4	122.6	131.7	31.....	67	42	50	99.5	100.9	103.6
7.....	83	92	83	123.8	124.0	147.1	32.....	67	42	50	98.7	102.0	110.0
8.....	33	75	83	112.1	120.1	134.3	33.....	67	42	50	93.2	99.8	109.2
9.....	33	67	50	110.1	117.5	124.7	34.....	33	42	50	97.2	102.8	111.0
10.....	33	75	50	103.5	102.7	108.7	35.....	33	67	50	102.9	109.0	115.8
11.....	67	42	50	100.6	99.4	100.3	36.....	33	75	50	105.1	114.1	114.8
12.....	33	42	50	100.7	101.6	107.3	37.....	33	83	50	114.9	123.3	129.3
13.....	67	42	50	100.7	99.1	101.7	38.....	67	67	50	107.3	108.6	118.8
14.....	75	42	50	107.6	102.1	87.9	39.....	50	83	50	106.1	111.2	120.3
15.....	67	42	50	105.7	108.4	113.8	40.....	33	58	50	115.1	118.4	141.0
16.....	75	50	50	106.3	107.8	109.3	41.....	35	83	50	112.5	117.0	131.1
17.....	33	67	50	116.8	119.1	128.4	42.....	50	92	50	105.6	124.2	135.7
18.....	92	75	50	108.3	111.8	115.9	43.....	33	83	50	111.6	116.0	133.9
19.....	50	92	83	126.1	132.7	139.5	44.....	35	92	50	120.1	117.0	135.6
20.....	25	42	50	87.3	99.3	102.2	45.....	75	50	50	102.2	104.8	116.6
21.....	67	42	50	100.4	101.5	104.5	46.....	33	58	50	119.1	120.4	132.3
22.....	67	42	50	102.5	102.9	107.8	47.....	42	67	50	115.1	119.8	126.0
23.....	67	42	50	97.9	101.2	109.1	48.....	33	75	50	121.5	119.4	137.4
24.....	58	42	50	85.8	102.4	105.7	49.....	58	92	67	133.6	128.7	135.9
25.....	67	42	50	97.3	105.8	105.0	50.....	33	67	67	119.8	123.4	139.9

ously at work when 25 out of 35 wards were carried for all the Bar's indorsees, as in 1921; or as in 1927, when three independents backed by the Bar won in 15 wards against the combined opposition of two party machines; or as shown in Table XXXVIII for the Superior Court election in 1928, when the Bar Association ticket cracked the powerfully-backed bipartisan slate in seven wards. That factor, although a seemingly inconsequential one as compared with the force of the party organizations, was undoubtedly the influence of the Bar Association.

Similarities between the same wards in different elections.—Although three instances cannot definitely establish trends, a statistical comparison of the index numbers in Table XXXVIII indicates a high degree of similarity between the three contests. Each series of numbers was ranked, assigning rank 1 to the lowest number and continuing to the highest one which was given rank 50. These series of ranks were then correlated by the "rank difference" method.²

In cases of identical rankings, under this method a coefficient of +1.00 would result. Comparisons for the three series in Table XXXVIII showed the following results: the two Municipal Court elections gave a coefficient of .90; the Municipal Court contest in 1926 and the Superior Court election of 1928 produced a coefficient of .81; the two contests in 1928, however, gave a correlation ratio of .89. Although a considerable distance from perfect agreement, these coefficients are so high as to suggest that certain constituencies tend to follow the recommendations of the Bar Association in successive judicial elections.

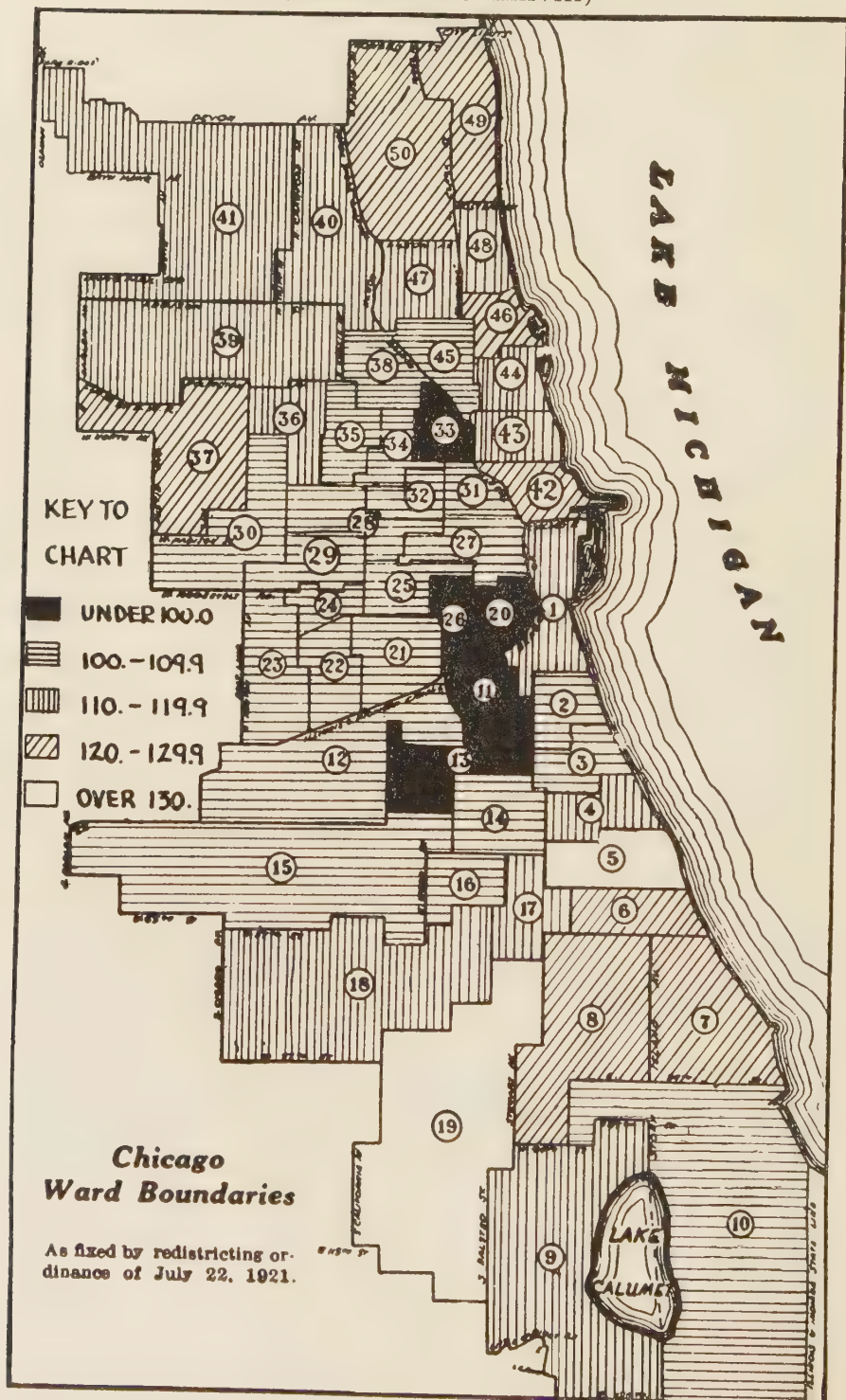
The tendency of certain constituencies to be guided by the Bar Association appears in evidence from other elections over a longer period of time. In 1921, for example, when one of the high points of Association activity was reached, the Bar-indorsed Democratic slate triumphed completely in 25 of the city's 35 wards, and won five other wards with an average of 90 per cent success. The opposition, on the other hand, carried only two wards completely and won a 17 per cent victory in three others.

In the Circuit Court contest of 1927 the criterion of Bar influence was the success of the three Bar-indorsed and supported independent candidates who had been denied renomination. They completely broke the coalition slate in 15 out of the 50 Chicago wards. In two other districts two of the three independents were "elected." In each area the Bar-guided vote undoubtedly put these three independents "over the top."

Similarly, against bipartisan coalition in the Superior Court election of 1928, the Bar Association "elected" three of its candi-

²For method see the "Scott Company Tables," *Journal of Applied Psychology*, IV (1920), 115-25.

CHART V
 THE INFLUENCE OF THE CHICAGO BAR ASSOCIATION IN THE
 VARIOUS VOTING CONSTITUENCIES
 Municipal Court Election of November 2, 1926
 (Data from Table XXXVIII)



dates in one ward (the fifth), two in three others, and one in three more districts. While in the year between these two contests the Association failed to hold its lead in ten wards, all of the seven wards won in 1928 were among the seventeen which were pro-Bar in 1927.

Owing to the decennial shifts in Chicago's ward boundaries, it would be difficult to trace the reaction of specific communities in Chicago to the Bar Association over long periods of time. Comparisons presented in Table XXXIX for two constituencies in the "country towns" furnish convincing evidence that some areas consistently follow, while others consistently disregard, the Association's indorsements.

TABLE XXXIX

SELECTED CONSTITUENCIES COMPARED IN RESPECT TO THE CONSISTENT TENDENCIES TO FOLLOW AND TO DISREGARD, RESPECTIVELY, THE RECOMMENDATIONS OF THE CHICAGO BAR ASSOCIATION
(Cook County Indicates Result of Election for the Entire Area)

Year	Court Contest	Index Number of Bar Association Influence for		
		"Country Towns"	"Cicero"	Cook County
1909.....	Circuit	109.3	95.5	88.7
1910.....	Superior	123.4	98.1	101.7
1911.....	Superior	129.6	97.2	117.6
1915.....	Circuit	118.6	97.1	114.8
1923.....	Superior	178.7	.....	116.2
1927.....	Circuit	207.1	103.2	128.3
1928.....	Superior	202.1	.....	121.2
1929.....	Superior	132.3	98.8	114.0
1933.....	Circuit	174.3	95.5	136.6

The town of Cicero, a western suburb of Chicago, has long been dominated by political organizations of both parties. Its tendency to vote *against* Bar Association-indorsed candidates appears almost consistent over more than two decades. The "country towns," on the other hand, include the "high-class," residential North Shore and western suburbs. This area has consistently voted heavily for Bar-indorsed candidates.³ The response of areas amenable to Bar influence is interestingly shown in the elections of 1927 and 1928, when the "country towns" voted more than two-to-one for the Bar candidates.⁴

The Circuit Court election of 1909 provides a striking commentary on the differences in Bar influence. As will be noted from Table

³In 1929, for example, New Trier (Winnetka, Glencoe, etc.) showed a ratio of 178.2, as against Cicero's 98.8.

⁴The election of 1921 showed a ratio of 144.3 on the face of the returns. This contest is not included in the foregoing table because the Bar Association indorsed the Democratic ticket en masse. Thus no comparable analyses could be made.

XXXIX, the county at large polled an unfavorable vote of 88.7, while the "country towns" scored 109.3, Oak Park rated 124.7, and New Trier Township, the heart of the North Shore, ranked 145.0.

Hyde Park, a residential community containing numerous churches and educational institutions, showed a high degree of consistent support for the Association's indorsees. With a 90 per cent of the Bar-indorsed candidates "elected" in 1915, it scored 100 per cent successively in 1921, 1927, and 1928, with a next-highest rating in 1929. In the Municipal elections in 1926 and 1928 its percentage scores show an opposite tendency. But when the index number ratios are taken into account, this ward consistently ranked the highest in the city in degree of Association influence.

Further evidence on the relation of the character of the community and the amount of Bar influence exerted came to light in an analysis of the vote cast in selected precincts of the Fifth Ward in the Municipal Court election of November 8, 1932. With the purpose of studying the effect of a direct appeal, the writer distributed ballots marked with Bar Association's recommendations and an explanatory appeal to some 400 voters in his home precinct (the 16th of the Fifth Ward). Other precincts in the ward were then compared. The result is more illuminating for the evidence of Bar influence in areas of diverse conditions than of the stimulating effect of direct mail advertising. The precinct comparisons are presented in Table XL.

The most striking comparison in Table XL is the contrast between four Negro precincts and the University of Chicago precinct. The Negro districts voted almost solidly Republican, showing practically no distinction between Bar-indorsed and unindorsed candidates in either party. The University section's 424 voters, on the other hand, voted three to one for Bar-indorsed Republicans and nearly five to one for Bar-indorsed Democrats. All of the other areas scoring index numbers of 148 or more and complete "election" of Bar-indorsed candidates were high-class residential areas. In a rooming-house area (Precinct 49), which was decidedly Democratic, one Republican, a Bar indorsee, marred an otherwise Jacksonian landslide.

In the writer's home precinct, the somewhat inadequate "stimulation" apparently failed of greater effect because of the personal popularity of an unindorsed Republican. Thus while the index for the Democratic groups was 189.5, the Republican score was only 125.6, giving a general average of 158.6 for the precinct.

Factors in Bar Association influence.—The wide variation between different constituencies in the degree of heed paid to the Association's recommendations invites speculation as to some of the possible factors responsible for the differences. Only an exhaustive inquiry of the racial or nationalistic, economic, social, and

TABLE XL

BAR ASSOCIATION INFLUENCE IN SELECTED FIFTH WARD PRECINCTS
MUNICIPAL COURT ELECTION, NOVEMBER 8, 1932

Precinct Number	Distinctive Characteristic of Area	Index Number of Bar Influence	Percentage of Bar-Indorsed Candidates "Elected"
16.....	Precinct stimulated with special appeal	158.6	83
8, 9, 17, 18, 31, 32	Precincts surrounding writer's precinct	136.1	92
62, 70, 80, 87...	Negro districts	104.0	58
49.....	Rooming-house area	127.3	50
27.....	Home precinct of member Committee on Candidates, C.B.A.	148.6	100
35.....	Home precinct of Republican Ward Committeeman	156.9	100
13.....	High-class hotel	210.1	100
47.....	Home precinct Professor C. E. Merriam	213.2	100
43.....	University of Chicago located therein	400.4	100
5th Ward.....	.....	141.1	75
City at large.....	.....	116.2	67

political characteristics would yield conclusive evidence, and the subject is worthy of such an investigation. It seems probable, however, that some of the influential factors are: the economic status of the voters and extent of home-owning; the extent of the party organizations in the locality; the number of community ties (i. e., churches, lodges, etc.); local taxpayers' or improvement organizations; local loyalties and traditions; the character and extent of different newspaper circulations; the racial origins and solidarities; etc.

The possibility was investigated that the number of Bar Association members residing in the respective communities might be such a factor. A generous sample of the Association's membership was classified according to the location of its residences, with the results as shown in Table XLI.

By comparing the wards containing relatively more members with the higher indexes of Bar-indorsed candidates "elected" we note a rough agreement between the two sets of data. But we notice, also, that there are other wards having fewer attorneys which show equally favorable results. Measurement of the relationship between the sets of data for the Municipal Court election of 1926 showed a low index (+0.2) and a fairly high relationship (+0.5) for the 1927 Circuit Court contest. The fact that a positive relationship is thus revealed is suggestive but not conclusive.

A ratio of one Association member to 300 voters, on the average, is too dilute to expect much influence from this circumstance, unless the member *worked for the Bar slate*. Many attorneys pass out marked ballots, mail them to their clients, and distribute them to organizations (clubs, churches, etc.) of which they are members. But it is doubtful if more than a few of them do the door-to-door

TABLE XLI
RELATIVE DISTRIBUTION OF CHICAGO BAR ASSOCIATION MEMBERS'
DOMICILES AMONG THE FIFTY CHICAGO WARDS
(Method: The domicile of every fourth member in a 1926 alphabetical list of attorneys was
traced and classified)

Ward	Number of Members Shown as Therein Residing	District	Ward	Number of Members Shown as Therein Residing	District
1	7	South Michigan	26	3	Pilsen
2	0	Douglas	27	4	Near West Side
3	7	West Kenwood	28	7	Humboldt Park
4	31	Kenwood	29	19	Garfield
5	68	Hyde Park	30	16	Austin
6	18	Woodlawn	31	1	Near Northwest Side
7	76	South Shore	32	1	Near Northwest Side
8	17	Grand Crossing	33	3	Near Northwest Side
9	6	Roseland	34	5	Near Northwest Side
10	3	South Chicago	35	7	Humboldt Park
11	1	Packingtown	36	2	Humboldt Park
12	2	Archer Avenue	37	23	Austin
13	2	Packingtown	38	8	Logan Square
14	4	Packingtown	39	12	Portage Park
15	6	West Englewood	40	6	Irving Park
16	6	Englewood	41	24	Norwood Park
17	7	Englewood	42	32	Lower North
18	7	Auburn Park	43	20	Lower North
19	31	Morgan Park	44	22	Fullerton-Clark
20	2	Pilsen	45	5	Riverview
21	1	Pilsen	46	29	Lincoln-Belmont-Clark
22	7	Lawndale	47	12	Lakeview
23	3	Lawndale	48	27	Central Uptown
24	16	Lawndale	49	91	Edgewater
25	1	West Town	50	28	Rogers Park

canvassing essential to political success. Furthermore, the larger percentage of lawyers who personally engage in political campaigns are probably attached to one of the major party organizations. As members of the Association, they may not openly oppose its efforts, but privately will exert their influence in the direction where their personal interests lie. How large a factor this element constitutes can be seen by adding together all of the politically connected lawyers—judges, assistant judges, masters-in-chancery, and the army of attorneys in the various prosecuting and legal departments of the local governments.

SUMMARY

There is a wide variation between different voting constituencies in the extent to which the voters follow the recommendations of the Bar Association. When the factors of party affiliation and incumbency are neutralized, it appears that the same constituencies tend to show the same degree of influence in successive judicial elections. It appears improbable that the relative extent of residence of the Bar Association's members in the different communities is a major factor in determining this influence.

PART V

FACTORS AFFECTING THE INFLUENCE OF THE BAR

INTRODUCTION

In presenting its recommendations to the public, the Bar Association is confronted by several practical considerations which affect the extent to which the recommendations are adopted by the voters. There are at least four factors the importance of which merit special analysis, and which are dealt with in the chapters that immediately follow. These factors are:

1. The *effect of Chicago's "long ballot"* upon the popular participation in judicial and other elections.
2. The *rôle of the press in the elective process* and the relation of its activity to the influence of the Bar Association.
3. The *attitude of the voters* toward the Association and its efforts to obtain a well-qualified judiciary.
4. *Partisan politics.*

These four factors are involved in every judicial election, and an understanding of their functions in the selective process is necessary before the effectiveness of the Association's efforts can be understood or appreciated.

CHAPTER XX

THE "LONG BALLOT"

THE "LONG BALLOT" AS A FACTOR AFFECTING THE INFLUENCE OF THE BAR

Only a small percentage of the electorate votes in Chicago's separate judicial elections. Even in the general elections, when the greatest participation is recorded, thousands of voters overlook the judicial offices on the ballot. These two circumstances call for examination and explanation.

Theoretically, the tendency for fewer people to vote in separate elections would favor the adoption of the Bar's recommendations, for a smaller majority would be required to put the best candidates over the top. Actually, however, the exact opposite is true, for unlike the regular party machines, the Association has no group comparable to a "political organization" on which it can count.

The lack of local organization obviously lessens the Association's influence, since the appeal of the Bar is addressed primarily to the large group of voters who are not "tied" to any political party. It is this independent group which becomes conspicuous by its absence at judicial elections. The party organizations, on the other hand, have their political mercenaries who, with their friends, are sufficient in "normal" campaigns to carry the organization slates to victory.

This inertia among the electorate is largely due, in our opinion, to the ennui produced by Chicago's "long ballot"—165 offices to be filled, more than one-half of which are judicial, hundreds of candidates to be considered, and a complicated schedule of no less than seven separate cycles of elections.¹

ELECTION SERIES INVOLVED IN THE SELECTION OF THE CHICAGO JUDICIARY

Series	Current Cycle	Judicial Offices Involved
I. General presidential.....	1928, 1932, 1936	Municipal Court of Chicago
II. General county.....	1930, 1934, 1938	Municipal Court of Chicago; County and Probate courts of Cook County
III. Mayoralty.....	1931, 1935, 1939	Municipal Court vacancies
IV. Aldermanic*.....	1931, 1933, 1935	Superior Court, regular; Municipal Court vacancies
V. Circuit Court.....	1927, 1933, 1939	Circuit and Superior courts
VI. November, Superior Court*	1929, 1935, 1941	Superior Court
VII. June, Superior Court.....	1928, 1934, 1940	Superior Court

¹In 1935 the election of aldermen was placed on a quadrennial, instead of a biennial, basis and the judicial elections under series IV and VI were consolidated into one contest held in June of the six-year cycle, 1935, 1941, etc. (see Illinois Revised Statutes, 1935 Chap. 37, §136.)

TABLE XLII
PARTICIPATION OF CHICAGO VOTERS IN VARIOUS SERIES OF ELECTION CONTESTS FOR JUDICIAL AND NON-JUDICIAL OFFICES
COMPARED
(Percentages are based on the vote cast in the City of Chicago only, for which registration data were available)

	Election Series		Percentage Participation of all Eligible Voters			
			Total Vote Polled	Votes Cast for Specified Office	Discrepancy	
	Years	No.			General Offices	Judicial Offices
I. General Presidential elections						
A. General ballot						
1. President and vice-president	1908-32	7	92.8	90.9	1.9	
2. Governor	1908-28	6	92.8	89.6	3.2	
3. State's attorney	1908-32	7	92.8	88.3	4.5	
4. Judicial vacancies						
<i>a</i> County Court	1920	1	94.5	88.5		6.0
<i>b</i> Circuit Court	1916	1	94.0	90.8		3.2
<i>c</i> Superior Court	1916, 1924, 1932	3	94.3	86.4		7.9
B. Separate judicial ballot						
1. Chief justice, Municipal Court	1912, 1924	2	93.5	71.7		21.8
2. Associate justice, Municipal Court, vacancy	1916	1	94.2	71.7		22.5
3. Bailiff, Municipal Court	1912, 1924	2	93.5	84.1	9.4	
4. Clerk, Municipal Court	1912, 1924	2	93.5	83.0	10.5	
II. General county elections						
A. General ballot						
1. President, county board	1906-30	7	84.2	75.9	8.3	
2. County treasurer	1906-30	7	84.2	77.1	7.1	
3. County Court	1906-30	7	84.2	78.0		6.2
4. Probate Court	1906-30	7	84.2	76.1		8.1
5. Judicial vacancies						
<i>a</i> Circuit	1910	1	88.4	80.2		8.2
<i>b</i> Superior	1910, 1930	2	77.4	66.3		11.1
B. Separate judicial ballot						
1. Chief justice, Municipal Court	1906, 1918, 1930	3	79.2	65.1		14.1
2. Associate justice, vacancy	1914, 1918, 1930	3	79.3	64.5		14.8
3. Bailiff, Municipal Court	1906, 1918, 1930	3	79.2	71.9	7.3	
4. Clerk, Municipal Court	1906, 1918, 1930	3	79.2	71.9	7.3	

TABLE XLII—*Continued*
 PARTICIPATION OF CHICAGO VOTERS IN VARIOUS SERIES OF ELECTION CONTESTS FOR JUDICIAL AND NON-JUDICIAL OFFICES
 COMPARED
 (Percentages are based on the vote cast in the City of Chicago only, for which registration data were available)

	Election Series		Percentage Participation of all Eligible Voters			
			Total Vote Polled	Votes Cast for Specified Office	Discrepancy	
	Years	No.			General Offices	Judicial Offices
III. <i>Municipal mayoralty</i>						
1. Mayoralty	1907-31	7		84.6		
2. Municipal Court, associate justice, vacancy	1915, 1919, 1931	3	86.3	68.6		17.7
IV. <i>Municipal aldermanic</i>						
1. Aldermanic aggregate	1909-33	10		55.5		
2. Municipal Court, associate justice, vacancy	1916	1	62.5	59.4		3.1
3. Superior Court, regular	1919, 1925, 1931	3	63.7	41.2		22.5
V. <i>Circuit Bench election</i>						
1. Circuit Court, regular	1903-33	6		42.9		
2. Superior Court, regular	1903-33	6	42.9	37.5		5.4
3. Superior Court, vacancy	1915, 1927, 1933	3	37.6	29.3		8.3
4. Probate Court, vacancy	1933	1	48.3	42.3		6.0
VI. <i>Superior Bench, regular, November series</i>						
1. Superior Court, regular	1905-29	5		39.7		
2. Superior Court, vacancy	1905-23	2	48.6	43.8		4.8
3. Circuit Court, vacancy	1905-29	4	38.9	32.8		6.1
VII. <i>Superior Bench, regular, June series</i>						
1. Superior Court, regular	1916-28	3		23.2*		
2. Superior Court, vacancy	1916, 1928	2	26.6	26.6		4.0
3. Municipal Court, vacancy	1922, 1928	2	20.1	18.5		1.6

*Includes only three contested elections; if the uncontested coalition election of June, 1934, when only 8.1 per cent of the voters went to the polls, were included, the index would be 17.9 per cent.

Three of the cycles are devoted wholly to judicial selection. Elections occurring at these times thus present clear-cut cases for analyzing the pulling power of judicial contests. Besides, in the general elections a separate ballot is provided for Municipal Court candidates. This particular enables us to study what happens when an already lengthy general ballot is further lengthened by an additional judicial ballot.

Comparisons were made on the following items: What percentage of the eligible electorate voted in the various elections, and what percentage voted in the various types of contests? In relation to the latter matter, the vote for such highly-contested positions of president, governor, mayor, etc., was analyzed as a basis for evaluating the interest shown in contests for full-term judicial positions and for judicial vacancies. This information, covering all contests for which figures were available during the period 1903-34, is summarized in Table XLII and Chart VI.

COMPARATIVE PARTICIPATION IN JUDICIAL AND OTHER ELECTION CONTESTS

The inclusive character of the information on which the percentages in Table XLII are based give us incontrovertible evidence of how the Chicago voters regard judicial contests. The voter sharply distinguishes between elections in which a judicial contest is only incidental and those in which it is the sole issue. From the following comparison it appears that each of the seven series has a distinctive index of participation, and those devoted to judicial contests fall sharply below the levels of general contests. (See Table XLIHIA). A similar differentiation appears if we compare the indexes of participation for the respective offices, as is done in Table XLIHIB.

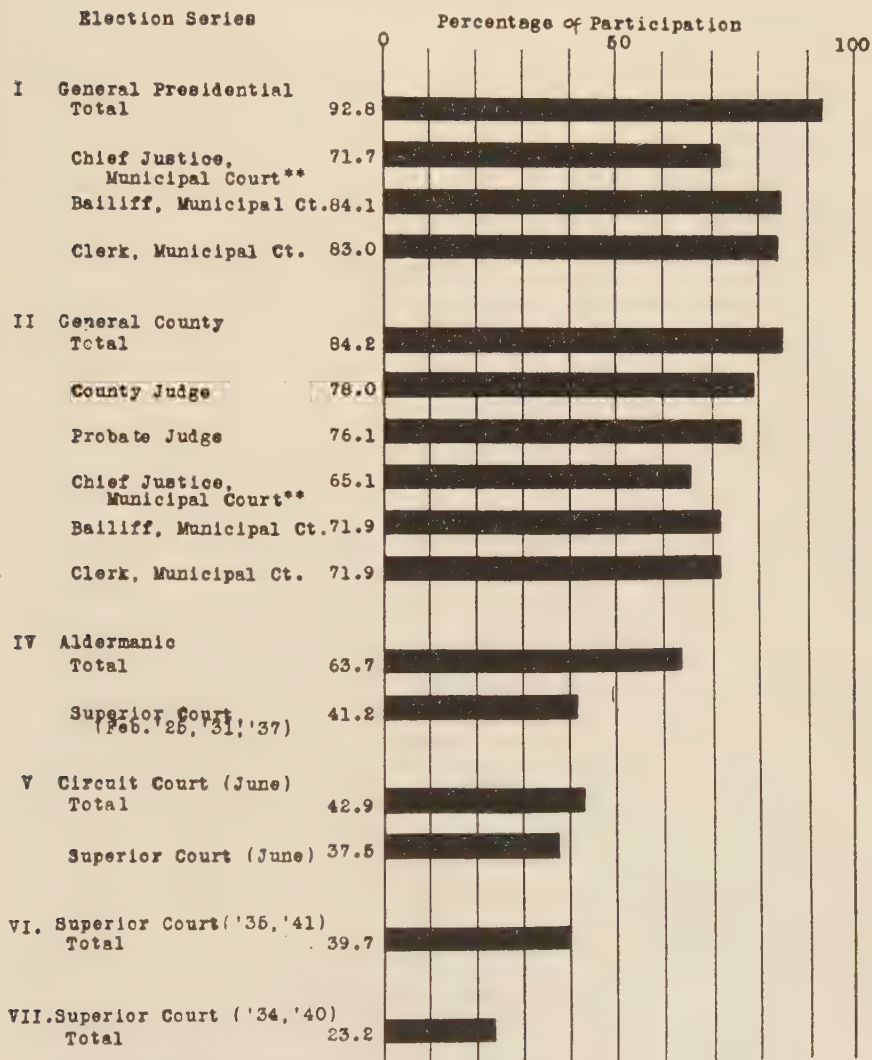
Whatever the reasons are for the failure of large numbers of voters to mark a ballot in judicial contests, their failure is strikingly evident in the foregoing comparisons. The important offices of Circuit and Superior judges draw 40 per cent or less of the voters; in the June Superior Court series this number dropped to 23.2 per cent for three "normal" elections. In June, 1934, another election in this same series reached an all-time low of only 8.1 per cent participation when a coalition slate had no opposition.

The vote for the chief justiceship of the Municipal Court illustrates how the electorate tends to overlook important judicial offices. It is voted upon when the largest participation is recorded, but 21.8 per cent of the electors failed to mark this office when it occurred in the presidential series, and 14.1 per cent "passed it up" in the general county series. This was not due entirely to its being listed on a separate ballot. For, in the same contests, the more political offices of bailiff and clerk of the Municipal Court, which

CHART VI

VOTERS' OVERSIGHT OF JUDICIAL OFFICES IN REGULAR ELECTIONS*

(Data from Table XLII)



*The Mayoralty series (No. III) is omitted because no judicial office is voted for regularly at that time.

**The Chief Justice of the Municipal Court and other judges and offices of that tribunal are voted for on separate ballots.

are also listed on the separate ballot, polled from 7 to 10 per cent more votes than did the chief justiceship.²

The cases of the county and probate judges appear to indicate a contrary trend. Listed as an integral part of the array of offices

TABLE XLIII
A. COMPARATIVE PARTICIPATION IN ELECTION SERIES

Series	Index of Participation
I. General presidential.....	92.8
II. General county.....	84.2
III. Mayoralty.....	84.6
IV. Aldermanic.....	55.5
V. Circuit.....	42.9
VI. Superior Court, November.....	39.7
VII. Superior Court, June.....	23.2

B. COMPARATIVE VOTE CAST FOR SPECIFIC OFFICES

Non-Judicial		Judicial		
Office	Index	Office	No. of Offices	Index
President.....	90.9	County judge.....	1	78.0
Governor.....	89.6	Probate judge.....	1	76.1
State's attorney.....	88.3	Circuit Bench.....	20	42.9
President, county board.....	75.9	Superior Bench		
County treasurer.....	77.1	November series.....	20	39.7
Mayor.....	84.6	June series.....	6	23.2
Aldermen.....	55.5	Aldermanic series.....	1	41.2
		Chief justice, Municipal Court	1	
		Presidential series.....		71.7
		General county series.....		65.1

on the general county ballot they derive the full benefit from the "straight" party vote. Also, the highly political office of county judge is one of the posts for which there is keen competition. It thus receives not only the "instructed" vote, but also the general support of the "better element" which takes sides in the fight for the power over the administration of the election machinery. These two offices are listed next to each other on the ballot. The voter who voted for one of them would probably vote for the other also. In the seven contests from 1906 to 1930, however, the county judge's office attracted nearly 2 per cent more votes than that of probate judge.

²Comparative indexes on this point are presented in the accompanying tabulation:

Municipal Court—Separate Ballot

Office	Participation		Discrepancy from Total Vote	
	Presidential	General County	Presidential	General County
Chief Justice.....	71.7	65.1	21.8	14.1
Assoc. justice, vacancy.....	71.7	64.5	22.5	14.8
Bailiff.....	84.1	71.9	9.4	7.3
Clerk.....	83.0	71.9	10.5	7.3

LOWER PARTICIPATION IN VACANCY CONTESTS

The failure of thousands of voters to vote in judicial contests, even when they have gone to the polls, is further revealed in the lesser number of ballots cast for judicial vacancies. This information is presented in Table XLIV.

TABLE XLIV
VOTERS' PARTICIPATION IN JUDICIAL VACANCY CONTESTS

Cycle in Which Vacancies Were Filled	Vacancy in Court System					
	Total	Vacancy	Total	Vacancy	Total	Vacancy
	Municipal		Circuit		Superior	
I. General presidential	94.2	71.7	94.0	90.8	94.3	86.4
II. General county	79.3	64.5	88.4	80.2	77.4	66.3
III. Mayoralty	86.3	68.6	.....	.....	.....	.....
IV. Aldermanic	62.5	59.4	.....	.....	.....	.....
V. Circuit Court .....	.....	.....	.....	.....	37.6	29.3
VI. Superior Court, November .....	.....	.....	38.9	32.8	48.6	43.8
VII. Superior Court, June*	20.1	18.5	.....	.....	26.6	22.6

*In the June, 1934, Superior Court election, the total participation was 112,798 voters, or only 7.7 per cent of the registered electors in Cook County. This election was uncontested, for there was only one (coalition) ticket in the field.

While the discrepancy between all votes polled and those cast in vacancy contests grows less as the extent of participation declines, there appears always to be a bloc of the electorate which overlooks these positions. This appears even in the case of the judge of the Superior Court that is elected on the same ticket with the Circuit Bench. In six contests 42.9 per cent of the voters cast ballots for the group of Circuit Court candidates while only 37.5 per cent of them voted for the single Superior judgeship, although the latter office is listed immediately underneath the main group on the same ballot.

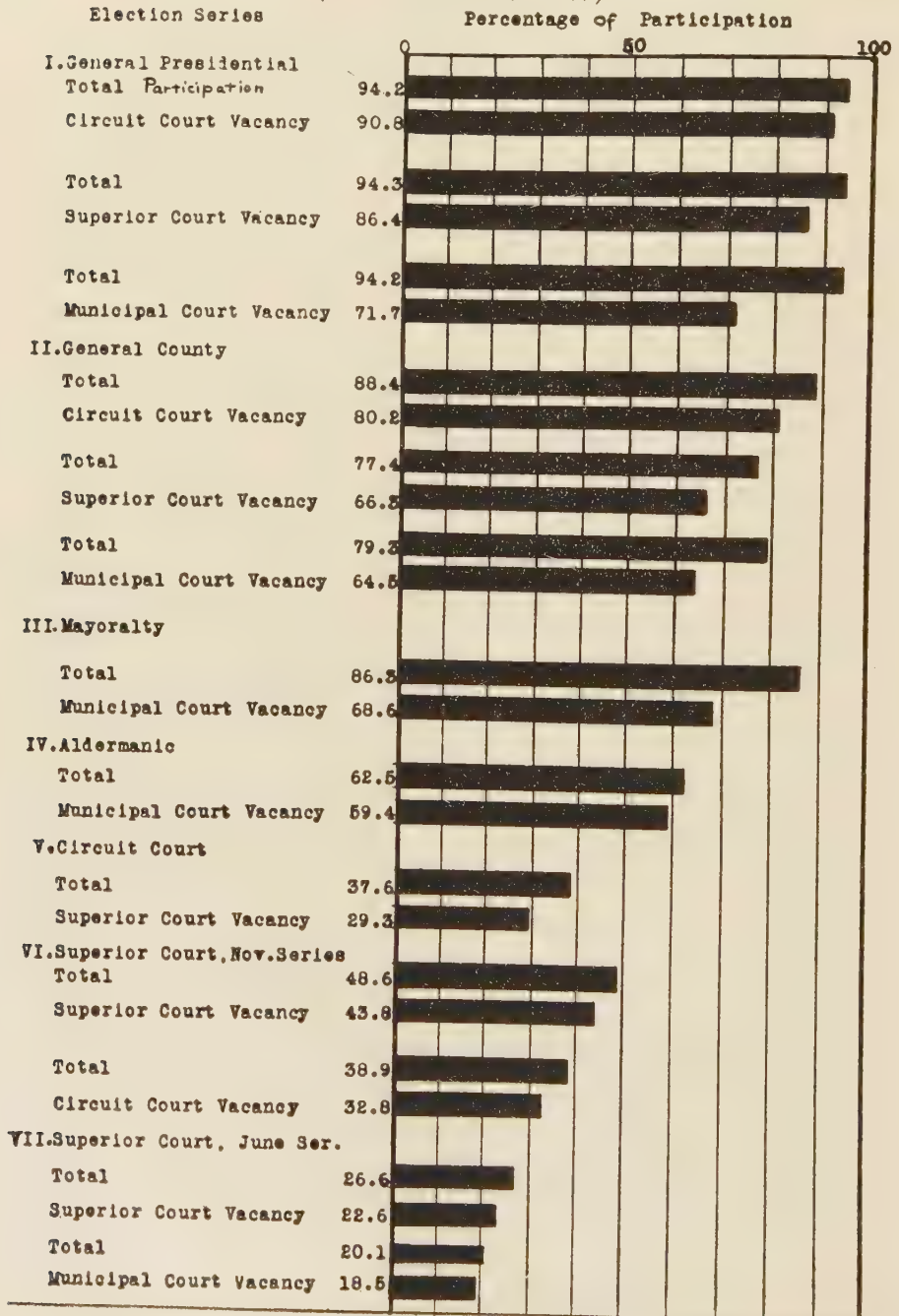
These disparities in individual contests are shown graphically on Chart VII, which classifies and merges data for twenty-one vacancies in the Circuit, Superior, and Municipal courts. The degree of indifference in each type of contest may be easily gauged from the chart.

There are some striking examples of extraordinarily low aggregate votes polled in contests for judicial vacancies. In 1915, for example, a vacancy on the Superior Bench, voted upon in the regular June Circuit Court election, polled only 15.3 per cent of the registered electors. In the same election series twelve years later 18.5 per cent of the voters expressed a choice for another vacancy on the Superior Bench; and in the June, 1928, Superior Court election, when only 22.7 per cent of the voters participated, 2.8 per cent failed to vote for a vacancy candidate. But a record in minimum expression for judicial vacancies occurred in the June 4, 1934,

CHART VII

EVIDENCES OF ELECTORS' INDIFFERENCE IN COMPARATIVE
VOTE CAST FOR REGULAR OFFICES AND JUDICIAL
VACANCIES

(Data from Table XLIV)



election when under a single coalition ticket an average for five vacancies, all on the same ticket, was approximately 83,200 or about 3 per cent of the registered electorate.³

The voters' indifference to vacancies on the Municipal Bench is even more pronounced than to those on the higher courts. In 1922, for example, when only 16.5 per cent of the registered electorate participated in a June Superior Court election, 2.8 per cent of this number overlooked a vacancy contest for the Municipal Bench. This same contrast between the two groups of courts is even more compellingly indicated by the averages for the series depicted in Chart VII. Thus, while the total participation in the presidential and general county elections in which vacancy contests occurred was practically identical (89.0 and 89.2), the disparity in aggregate votes for the judicial vacancies was 7.4 per cent for the Circuit and Superior Court contests and 30.3 per cent for the Municipal Court vacancies. Municipal Court vacancies filled in the mayoralty elections registered a 17.7 per cent drop from the average participation of 85.9 per cent.

IS THE "LONG BALLOT" RESPONSIBLE?

Is the "long ballot" responsible for this sharply diminished interest in judicial elections? In the light of the cumulative burden which it places on the individual voter, we believe it reasonable to conclude that it plays a large part. The voter can form an opinion respecting the merits of the candidates for the prominent offices. Occasionally a judicial office (the county judgeship, for example), may be included in this group. More often, however, the judicial contingent constitutes a group of offices on the ballot. The judicial candidates usually campaign as a group, but take a less active part than the headliners in the campaign. A group of candidates becomes impersonal in contrast to the vivid appeal which an individual candidate for president, governor, state's attorney, or mayor may make. Consequently, the judicial candidates receive proportionately less publicity. Hence, the voters become less informed concerning them and tend to pass them over on the ballot.

In this sense, the devices of the separate ballot, the rotation of names, and separate elections, which are designed to neutralize partisanship, have the effect of reducing the participation of the voters.

A point of diminishing returns appears to have been reached long ago in the Chicago ballot situation. A conscientious voter can inform himself, but the task requires much time and research to

³This election was unique in another respect. The name of one of the candidates for a vacancy (C. J. Harrington) was "written in" in place of the regular nominee (F. J. Corr) who died on the eve of the election. Judge Harrington's 57,268 "votes" were only 2.0 per cent of the registered electors in Cook County, the electoral constituency.



Reproduced by permission of *The Chicago Tribune*.

Figure 4.—Carey Orr, staff artist of *The Chicago Tribune*, cleverly depicts the throes of the would-be-intelligent voter under Chicago's present "long ballot."

obtain the necessary information to vote intelligently. In addition to the difficulty of getting information, the complexity of the issues, the confusion of counsel, and the charges and counter-charges of self-interest, all tend to confound the voter who would gladly do his duty if he could discover where it lies.

The factor of disillusionment must also be considered. For the development of the party system, and of organizations under the system, has severely restricted the voter in his choice of public-purpose parties and in his selection of candidates. In the case of coalition judicial nominations, the restriction has completely nullified the voters' right of choice.

Over a period of years, the elective process in Chicago appears to have gone through a vicious cycle. The long ballot, plus the professionalized party system, has progressively regimented the voters under that system. With the development of rules essential to the system, the seat of power has passed from the hands of the voters to the hands of the party organizations' managers, who, in turn, derive their authority from a minority and exercise it with the passive acquiescence of the majority. The complexity of the long ballot contributes directly to this domination.

SUMMARY

In what ways, then, may we say that the long ballot affects the influence of the Bar in the selection of judges?

1. Instead of an electorate free in spirit and action, intelligently choosing between candidates of known merit, we find, due largely to the long ballot, an electorate indifferent, disillusioned, and frustrated, who have a restricted choice of candidates, for lawyers of optimum qualifications are reluctant to forego private practice for the "agonies of the metropolitan Bench."

2. These circumstances narrowly circumscribe the Bar Association's field of action. It must mesh into a mechanism which governs the selective process, but which it does not or cannot control. Its recommendations should be received gratefully, it would seem, by an electorate eager to be enlightened. On the contrary, many indifferent voters appear to regard the Association as another "racket" trying "to put something across" for the selfish interest of its members.

CHAPTER XXI

THE PRESS

AS A FACTOR AFFECTING THE INFLUENCE OF THE BAR

The press has been called "the eyes and ears of the people." Day by day, almost hour by hour, it keeps the community in contact with the complex and constantly shifting panorama of public life. It is the principal source of the electorate's information, opinions, and prejudices which determine the fate of men and measures at the ballot box.

Of all the agencies that mold and direct public opinion the press is the most important. The platform, the radio, the motion picture, and the billboard are inert agencies. The press, on the other hand, is in the nature of a self-contained institution that actively participates in the life of its community. In this sense it becomes not only the eyes and ears, but also sometimes the brains of the people, for its reporting and interpreting of events subtly shapes the readers' viewpoints.

In a metropolitan, cosmopolitan constituency as large as Chicago, the press becomes almost the key consideration in any program involving political action. A newspaper's clientèle is a ready-made forum for a "cause." The press also provides the least expensive medium for addressing the voters, even if space has to be bought for advertising. If the matter classifies as "news" and is printed free, so much the better. In fact, many a cause seeks public favor with only an idea and the prospect of free press publicity. This factor of gratuitous notice frequently leads the sponsors of a political movement to shape their courses, to nominate their candidates, and to conduct their campaigns so as to receive the editorial approval and support of particular journals. Political contests thus tend to become wars of words fought in the pages of the press, with the laurels going to the candidates or factions filling the most column-inches or winning the biggest headlines. Under these circumstances the press not only influences the course of individual candidacies but also determines the success of organizations such as the Bar Association.

The functioning of the press affects the selection of the judiciary in another way. Under Chicago's system of electing judges by partisan ballot for short terms, aspirants for the Bench must employ various tactics to attract public notice through the pages of the press. Candidates for the Bench, including incumbents who desire to be re-elected, are practically forced to campaign continuously. Their efforts to attract notice may be subtle and may take the form of a community or "human-interest" activity. Nevertheless, the object is to convert the favorable notice into votes.

Thus newspaper notice may not only shape a candidate's professional future, but may also profoundly affect the influence of the Bar Association by creating a tradition regarding a candidate which may have little relation to his fitness for the office as determined by the Association.¹

Over periods of months and even years popular traditions regarding individual candidates are thus created which may be sharply at variance with the recommendations of the Association in specific campaigns. When the tradition or prejudice coincides with the Association's viewpoint, the situation is obviously advantageous. When the opposite is true, the futility is apparent of attempting to overcome a popular bias toward a candidate by a few publicity releases or a brief attack during a campaign.

PRESS COVERAGE OF THE CHICAGO ELECTORATE

Before examining the attitude of the Chicago press toward the Bar Association, it is necessary first to ascertain what types of media the local press includes and the extent to which the various media "cover" their reader-voter constituencies. Chicago's population is divided into sharply defined ethnical groups. Consequently, in addition to the five English-speaking daily newspapers, which circulate throughout the entire metropolitan area, there are numerous foreign-language publications. The number and extent of these various groups and their press coverages are indicated in Table XLV.

Assuming that the great majority of the circulation of the various newspapers is concentrated in the city of Chicago and among the respective nationalistic groups residing in Chicago, it is apparent that the combined coverage of the English-speaking publications is quite complete, if figured at only one copy to a person. This coverage is even more complete if we consider that newspapers usually circulate among families containing several potential voters. In addition, there are more than fifty neighborhood weekly publications which are in a position effectively to supplement the metropolitan dailies. These journals are usually closely identified with the organized activities of their respective communities, and as such have a better "in" to their constituencies than the papers of general circulation.

Although the "coverage" appears to be less complete in the case of the foreign-language and racial press, these publications provide an important avenue of contact with large groups of voters. The

¹The entire matter of the relation between the judiciary and the press is closely involved in the matter of judicial selection by reason of the traditions and prejudices thus created. For extended discussions of this subject see *Criminal Justice in Cleveland*, Part VII; Stuart H. Perry, "The Judiciary and the Press," *Journal of the American Judicature Society*, XVI, 108; also, "Report of the Committee of Conference Bar Association Delegates," *American Bar Assn. Journal*, XIV, 620.

THE RÔLE OF THE BAR

TABLE XLV
 NEWSPAPER "COVERAGE" OF ELECTORAL GROUPS IN CHICAGO
 Registered Vote in Chicago in 1932.....1,498,314
 Population over twenty-one, Eligible To Vote in 1930.....1,922,515

Group	Estimated Voting Strength of Group	Press Media	1932 Circulation in Excess of
<i>English speaking</i>			
Native white population over twenty-one years of age.....	1,226,891	Chicago Daily Tribune..... Chicago Sunday Tribune..... Chicago Herald and Examiner: Daily..... Sunday..... Chicago Daily News..... Chicago Evening American..... Chicago Daily Times..... 55 neighborhood publications.....	800,000 1,000,000 400,000 1,000,000 400,000 500,000 179,000 300,000
<i>Nationalistic and racial</i>			
Polish.....	262,621	Dziennik Chicajoski..... Daily Zgoda..... Polish Daily Union.....	31,140 32,000 30,000
German.....	247,347	Sontagpost..... Abendpost.....	36,619 41,780
Jewish.....	212,680	Daily Jewish Courier..... Chicago Jewish Chronicle..... Daily Jewish Press..... Jewish Progress.....	47,000 20,000 32,500 20,000
Negro.....	165,000	Chicago Defender (W).....	110,000
Scandinavian.....	147,446	Scandia (W)..... Svenska Tribunen Nyheter (W).... Svenska Amerikanaren (W)..... Scandinaven (W).....	15,000 52,078 61,108 38,000
Italian.....	119,000	Italian Tribune..... L'Italia (Tri. W)..... Italian Daily News.....	25,000 35,000 38,000
Russian.....	111,075	Rassviet (D).....	20,000
Czechoslovak.....	79,895	Bohemian Daily Svornost..... Bohemian Daily Narod..... Bohemian Daily Denni Hlasatel (Semi W).....	50,000 2,655 50,000
Lithuanian.....	41,828	Naujienos.....	37,625
Jugoslavia.....	21,131	Americanski Slovenic..... Chicago Slovak Daily News.....	8,170 25,550
Hungarian.....	19,911	Hungarian News.....	14,604
Greek.....	17,266	Greek Star (W)..... Chicago Greek Daily.....	10,000 *

*Not published.

political strength and effectiveness of these groups has been heightened by their solidarity and their concentration in well-defined sections. Despite a sharp decrease since 1920 in the number of foreign-language publications circulating in Chicago (due no doubt to the twin factors of depression and progressive racial amalgamation since the immigrant influx was checked), these journals in 1936 continue to be an important element in the Chicago social and political situation.

THE ATTITUDE OF THE PRESS TOWARD THE BAR ASSOCIATION

What has been the attitude of the various classes of Chicago newspapers toward the recommendations of the Bar Association? In trying to answer this question, we have sought two types of information: (1) the extent to which the newspapers have supported the recommendations of the Association or adopted them as their own; (2) explicit editorial expressions concerning the Association's practice of issuing recommendations and the reliability of its recommendations.

1. *Identical indorsements.*—The extent to which the metropolitan daily newspapers have either adopted the recommendations of the Association as their own or to which they have indorsed identical candidates, is presented in Table XLVI. The information covers the period from 1921 to 1933.

The *Daily News* and the *Chicago Tribune* have consistently issued recommendations for the guidance of their readers. In general, they have tended to follow the Association's indorsements. In terms of the number of identical candidates indorsed, the *Daily News* showed a percentage of 97 and the *Tribune* of 92.7. The indexes for the *Evening Post* and the *Journal* are now only matters of historical interest, both publications having since passed from the scene. The Hearst publications—the morning *Herald and Examiner* and the *Evening American*—have issued recommendations only occasionally, although in practically every contest they have published the Association's recommendations as *news* items when first issued.

2. *Explicit editorial comment.*—The different policies of cooperation suggested in the following section have received explicit editorial explanation in several instances. Thus, the *Daily News* has always warmly indorsed the Bar primary plan in principle and in action. In its issue of October 23, 1926, the *News* said:

THE BAR ENTERS THE CAMPAIGN

What is known as the Bar primary—the informal vote of the members of the Chicago Bar Association on the candidates for judicial office—has been for years an invaluable aid to thoughtful citizens who appreciate the necessity of strong, capable, and independent courts. Partisan or factional politics has never tainted the results of the bar association's balloting. Unfit or weak

THE RÔLE OF THE BAR

TABLE XLVI
NEWSPAPER SUPPORT OF BAR ASSOCIATION RECOMMENDATIONS, PERIOD: 1921-33

Newspaper	Number of Instances When Full List of Recommendations Was Made	Number of Judges Elected	Number of Candidates Indorsed by Bar Ass'n.	Candidates Indorsed by Bar also Indorsed by the Press		Bar Assn.		Influence of Bar and Press Compared in Terms of Indorsed Candidates Actually Elected	
				Number	Per Cent	Number	Per Cent	Number	Per Cent
Daily News.....	12	232	229	222	97.0	173	74.6	170	73.3
Daily Tribune.....	11	205	205	190	92.7	157	76.6	155	75.6
Evening Post.....	6	112	110	103	93.6	90	80.4	83	74.2
Journal.....	6	91	91	80	87.9	79	86.8	71	78.0
Herald and Examiner.....	4	59	59	41	83.7	55	93.2	39	83.1
Evening American.....	2	40	40	28	70.0	38	95.0	27	67.5

candidates have always been so characterized, and candidates of merit and high qualifications for judicial functions have received emphatic indorsements, notwithstanding the opposition in many cases of powerful spoils machines and political bosses.

With sound logic the bar association has drawn the inference that its indorsement of a candidate carries a moral obligation to help elect him. Accordingly, the association has undertaken an active campaign on behalf of the judicial candidates it has approved and recommended to the voters of the city and the county. . . . In Chicago, by the tacit command of the best elements of the electorate, sitting judges are debarred from taking the stump and soliciting votes or funds. Very commendably, then, the bar association has decided to work systematically for the election of the judicial candidates it has declared to be qualified and desirable. This disinterested service will be welcomed by all voters who hate spoils, favoritism, politics and subserviency on the bench and who are determined to prevent the annexation of any court by any political faction, clique or party.

In November, 1932, the *Daily News* supported the Association's recommendations with these words:

. . . . Although infallible wisdom is not to be expected of the majority decisions of the bar association, or of any other human agency, it is reasonable to assume, that since in the case of the Association they are based on careful scrutiny and report, and since they conform to the deliberate conclusions arrived at by *The Daily News*, they offer as reliable a guide as circumstances make available.²

Again, in the Circuit Court election of 1933, the *Daily News* adopted the recommendations of the Bar Association as its own and for several weeks in advance of the election printed them as its editorial leader. On June 3 it said:

The Chicago Bar Association, with courage and unassailable logic, is leading the fight to prevent the re-election next Monday of certain judges . . . who . . . have proved themselves unworthy of public trust.³

A post-campaign editorial contained this estimate of the Association's position and policies:

The bar association today is a vigorous and militant organization inspired by high ideals, and willing to work and take certain risks in the interest of the community's welfare. It has fought deep-rooted abuses in the appointment of receivers and receivers' attorneys. It has fought political subserviency and corruption on the bench, and has had the courage to brand as unfit judges backed by powerful partisan and bipartisan machines. It has worked earnestly for wise reforms in court procedure and practice, now embodied in a civil practice bill pending in the legislature. It has become a strong force for genuine progress and righteousness in the legal profession and in the community.⁴

The *Chicago Tribune* views the Bar primary as a "step forward" in a long and gradual process of improving the method of judicial selection, as follows:

. . . . Laymen must recognize that they are not prepared to make wise

²Issue of November 7, 1932.

³See also editorials in issues of April 21, May 3, May 12, May 13, May 15, May 22, May 24, 1933.

⁴June 10, 1933.

SAMPLE OF MUNICIPAL COURT BALLOT

Marked according to the Chicago Bar Association
and The Daily News recommendations.

SPECIMEN JUDICIAL TICKET



DEMOCRATIC

FOR ASSOCIATE JUDGES OF THE MUNICIPAL COURT

(Twelve to be Elected)

- ☒ JOHN J. ROONEY
2910 Archer Ave
- ☒ ROBERT JEROME DUNNE
737 Gordon Terrace
- ☐ FRANK H. BICEK
2526 Ridgeway Ave
- ☐ JOSEPH H. McGARRY
1215 Arthur Ave
- ☐ LAMBERT K. HAYES
1846 N New England Ave
- ☐ MICHAEL G. KASPER
11346 Longwood Drive
- ☐ N. J. BONELLI
1108 S. Oakley Blvd
- ☐ AUGUST G. URBANSKI
2516 N Kedzie Blvd
- ☒ EUGENE HOLLAND
3129 Lowe Ave.
- ☒ JOHN GUTKNECHT
1625 Hood Ave
- ☒ CECIL CORBETT SMITH
9955 Prospect Ave
- ☐ ERWIN J. HASTEN
4428 N Paulina St



REPUBLICAN

FOR ASSOCIATE JUDGES OF THE MUNICIPAL COURT

(Twelve to be Elected)

- ☒ SAMUEL H. TRUDE
7059 South Shore Drive
- ☒ EDWARD B. CASEY
6824 Wayne Ave.
- ☒ SAMUEL HELLER
4834 N Springfield Ave.
- ☒ JOHN A. SBARBARO
708 N. Welle St.
- ☒ GEORGE B. HOLMES
441 W 102nd Place
- ☐ ALFAR M. EBERHARDT
1019 Bryn Mawr Ave.
- ☒ FREEMAN LE ROY FAIRBANK
9167 Pleasant Ave.
- ☒ ROBERT E. McMILLAN
3233 Washington Blvd.
- ☐ JOSEPH W. SCHULMAN
1244 Independence Blvd.
- ☐ WILLIAM R. FETZER
6533 Kimbark Ave.
- ☐ EDWARD A. FISHER
4001 Winthrop Ave
- ☐ JOSEPH F. HAAS
11118 South Michigan Ave.

Figure 5.—An example of one form of co-operation between the Press and the Chicago Bar Association. *The Chicago Daily News* printed this specimen marked ballot in its columns for several issues in advance of the November, 1932, election.

selections in the field of judicial fitness. That is a job for the specialist in law. This is recognized in the establishment of the bar primary, which in the main voters are disposed to accept as a guide. But bar primaries need to be greatly improved, and perhaps this leads us into the larger question of the improvement in the personnel of the legal profession. The bar primary

at any rate is a step forward toward efficiency and responsibility in judicial selection.⁵

A later editorial urged the Association to study the problem of improving its recommendations.

In the selection of our judiciary the advice and guidance of the profession should be available to lay voters, . . . it is essential that professional judgment shall be as free from personal and professional interests and as broadly founded in the public interest as is humanly attainable. An assured confidence in the voter depends upon this and while the public in Chicago has shown its disposition increasingly to follow the advice of the Bar Association, there exists considerable doubt of the disinterestedness and representative character of some recommendations. . . . Counsel of perfection is not intended but substantial improvement of existing conditions we think is practicable. As a staunch supporter through many campaigns of the Bar Association's efforts, *The Tribune* and other friends of the profession of like opinion may hope for some attention to these suggestions.⁶

The *Tribune* has uniformly followed the policy of publishing the Association's recommendations, and in 93 out of every 100 cases has adopted these indorsements as its own. Its plan evidently has been to accept the Bar's findings as a starting-point and to make exceptions or additions to the list, explaining the exceptions editorially.⁷ The *Tribune's* attitude, however, is illustrated by its list of recommendations for the Circuit Court election in 1933. The *Tribune* printed its own marked ballot, but also prefixed a "B" to the names of candidates recommended by the Association.

The *Chicago Herald and Examiner* has had a policy of strict independence in recommending candidates to its readers. In 1926 it regarded the Association's findings as "more than a straw" and as "a mighty good thing for all voters to keep in mind."⁸

In 1933 the publication reiterated its independence in these words:

The *Herald and Examiner* has published its recommendation of judicial candidates. They are not the representatives of one party. . . . The selection of candidates was made purely on the basis of determining who would best serve the people.⁹

While 83.7 per cent of the publication's indorsements coincided with those of the Bar Association, its attitude has either been slightly critical or entirely neutral.

PRESS TREATMENT OF CAMPAIGN NEWS

Judicial contests are comparatively unspectacular. Even political tradition holds that judicial office should not be subject to the "normal" rough-and-tumble hubbub of bipartisan strife. The traditions of the legal profession are ultra-conservative. Thus

⁵September 12, 1932.

⁶June 7, 1933.

⁷For example, see editorials of April 4, 1928; October 30, 1930; November 6, 1932; June 6, 1933.

⁸Editorial of June 24, 1926; also February 25, 1926.

⁹June 5, 1933.

normally these two circumstances help to minimize the elements of strife, conflict, and drama that automatically command newspaper space. News of activity in judicial contests is therefore likely to be subordinated to more spectacular items, unless the Association, or some particular circumstance, forces an issue and "makes" news.

Some specimen situations will indicate the relation between the amount of activity during a campaign and the amount of space which the contest receives in the press.

Little activity; little space.—In the April, 1931, mayoralty election, two candidates sought a vacancy on the Municipal Bench. Over a forty-day period the *Tribune* devoted a total of six column-inches to this contest. Assuming that the other four daily papers gave it equal notice, we have a grand total of one and one-half newspaper columns or an average of one-tenth line per day per paper between the primary and election.

A "normal" *Municipal Court campaign.*—The Municipal Court primary and election in 1932 represent a "normal" amount of activity on the part of the Association. The campaigns of the candidates were also "normal." The Bar Association conducted its usual primaries and released its recommendations through the press. Without putting on a "drive," it obtained as much notice as possible by sending speakers to civic organizations and by distributing marked ballots.

A thorough canvass of one edition of a morning (the *Tribune*) and an evening paper (the *Daily News*), each of which was highly co-operative with the Association, showed that the *Tribune* printed 49 column-inches during the primary campaign and 97 during the election campaign; similar totals for the *Daily News* were 74 and 82 column-inches, respectively. The publicity thus received probably represents a maximum lineage under the circumstances. Thus during the last two weeks of the primary campaign the Association's indorsements received approximately six columns of space. During the election campaign the combined space amounted to approximately eight columns, or one full page, over a period of three weeks.

While the amount of space appears large in the aggregate, the individual notices were interspersed among thousands of other unrelated items. The publicity was concentrated just before the election days, and in this respect it was probably as effective as possible. But the effect on the general voter was perhaps lessened by the greater attention paid to the acrimonious contests for the more prominent offices of state's attorney, president, etc.

In both the primary and the election, the bulk of the press notice went to the bitter campaign for the state's attorneyship. In this respect the situation was "normal" for a general election, since the judicial candidacies were relegated to the rôles of "also rans." The

Association was frequently mentioned in this contest,¹⁰ but the total effect was probably to distract attention from the fitness of the various candidates for the Municipal Bench.

A press "crusade."—The Circuit Court election of June 6, 1921¹¹ contained several issues that made "good copy"—"Keep the hand of the spoilsman off the courts," "Save the Juvenile Court and the parks from political domination," "Re-elect deserving judges," etc. The *Chicago Tribune* took up the judicial fight with a vim and vigor seldom, if ever, equaled in local annals. It was a typical newspaper "crusade" in every sense of the word. All of the facilities of the modern newspaper—news columns, editorials, photographs, and cartoons were utilized. During a period of fifty-five days the *Tribune* devoted a total of 119 columns of space or approximately fifteen full, eight-column pages¹² to the cause.

With no extraneous issues to divert attention from the judicial contest, there can be no doubt that the large amount of favorable notice in the *Tribune* and other papers was a major factor in the overwhelming victory of the ticket supported by the Association.

Table XLVII compares the lineage devoted by a single publication to various types of judicial campaigns. This table demonstrates that the same publication will accord varying degrees of

TABLE XLVII
SPACE DEVOTED BY THE *CHICAGO TRIBUNE* TO VARIOUS TYPES OF
JUDICIAL CAMPAIGNS

Year	Court	Campaign Situation	Total Space as Gauged in:		
			Column-Inches	Columns	Pages
1931	Municipal	One office; no Bar campaign	6	0.3	0.04
1932	Municipal Primary and Election	12 Municipal judgeships and 2 Circuit vacancies; "Normal" Bar activities; keen contest for state's attorneyship	49	2.5	0.3
			96	4.8	0.6
1933	Circuit	Vigorous campaign; distracting issue of prohibition repeal	644	32.2	4.0
1921	Circuit	A crusade	2,376	119.0	15.0

co-operation in different campaigns, depending on the news value of issues and the dramatic circumstances in each situation.

This point concerns the Bar Association for two reasons: (1) greater interest on the part of the voters results when sharply de-

¹⁰See p. 289 for the Association's investigation of receiverships, which played a part in the contest for the state's attorneyship.

¹¹See chap. X for the issues and the Association's part in this campaign.

¹²The matter was divided as follows: news items, 63 per cent; editorials, 15 per cent; photographs, 14 per cent; cartoons, 8 per cent.

finer issues are raised. Issues provide grist for the publicity mills. Only when an abundance of grist is available does the press devote continuing attention to the judicial candidacies involved. (2) If the Bar Association will raise in each campaign one or more issues related to the fitness of the candidates for judicial office, the press will follow suit. Much desirable publicity on behalf of both the principle on which the Association acts, and the candidates whom it recommends, will then result.

THE FOREIGN-LANGUAGE AND THE RACIAL PRESS

To what extent has the foreign-language and racial press noticed the Bar Association's recommendations? The following steps were taken to obtain this information:

The offices of seven newspapers were visited. Usually the editor, or some other person who could discuss the paper's editorial policy authoritatively, was first interviewed. Then the files of the paper were canvassed (with assistance, wherever necessary, from someone who spoke the language) for each judicial election period from June, 1921, forward, and the occurrence of news stories, advertisements, recommendations, etc., relating to judicial elections was noted.¹³ In some cases only current files were available. In others it was possible to compare in complete detail the way the several judicial contests occurring during a decade had been handled.

This brief survey suggested the following observations:

1. That the foreign-language press has considerable actual and potential influence among the racial and nationalistic voting blocs. The advertising in its pages indicates a recognition of this influence by the party organizations, by the candidates, and by the Bar Association. While this press faces the difficulties of survival, it will remain for some time as an important avenue to these nationalistic groups.

2. "Favorite sons" receive special consideration, in editorial indorsement and in preferential treatment in amount and position of news space.

In certain cases the editorial policy appears to be motivated by considerations of expediency. The dependence of these newspapers, in general, upon advocating issues and candidates that will prove popular with their readers, militates against close co-operation with the Chicago Bar Association.¹⁴

3. The occasional mention of Bar Association activities was

¹³See summaries of investigations in Appendix II, p. 370 ff.

¹⁴When one editor was asked regarding his paper's outspoken assistance to a judicial candidate who had been denied Bar Association indorsement, he replied: "Who? Oh, hell, he *lives* out here! If we didn't indorse him, they'd run us off the street. Personally, I don't think any more of him than the Bar Association; he's no lawyer, and I wouldn't *vote* for him, but what're you going to do?"

Ar Politiski Bosai Turi

SKIRTI

Ar Zmonės Turi

RINKTI

JUSŲ TEISEJUS?

Bepartyvė rekomendacija
CHICAGO BAR ASSOCIATION
kuri susideda iš 4500 narių

Howard W. Hayes
Daniel P. Trude
Charles Center Case
Walter P. Steffen
Martin M. Gridley
Joseph Sabath
For Vacancy
James J. Barbour
rinkiti nepriklausomus, ne bailius, atsakan-
čius bepartyvius teisėjus

Panedėlyj, birželio 4 dieną
The Chicago Bar Association
Carl L. Latham, President

Lithuanian

Majį političti bosovė
USTANOVAVATI neb
lidė VOLITI své soudce?
Nestranické odporučení

CHICAGO BAR ASSOCIATION,
sostávající ze 4500 členů.

- ☒ HOWARD W. HAYES
☒ DANIEL P. TRUDE
☒ CHARLES CENTER CASE
na uprázdně místo
☒ JAMES J. BARBOUR
☒ WALTER P. STEFFEN
☒ MARTIN M. GRIDLEY
☒ JOSEPH SABATH

Zvolte neodvialé, nebojácne, schopné, ne-
stranné soudce v pondělí 4. června

THE CHICAGO BAR ASSOCIATION
Carl L. Latham, president

Czechoslovak

Figure 6.—Specimens of advertisements inserted in the local foreign-language newspapers and paid for at regular rates by the Chicago Bar Association in its campaign to win votes for its nominees in the June, 1928, Superior Court campaign.

merely incidental to the reporting of news events. No instance was found of co-operation with or even an inclination to follow the Bar Association on the principle that its recommendations are the im-
partial findings of an expert body.

Sollen unsere Richter von politischen Führern
ernannt oder sollen sie vom Publikum
erwählt werden?

Unparteiische Empfehlung**CHICAGO BAR ASSOCIATION**

mit 4500 Mitgliedern

- ☒ HOWARD W. HAYES ☒ WALTER P. STEFFEN
☒ DANIEL P. TRUDE ☒ MARTIN M. GRIDLEY
☒ CHARLES CENTER CASE ☒ JOSEPH SABATH
For Vacancy
☒ JAMES J. BARBOUR

Erwählen Sie unabhängige, furchtlose, fähige,
unparteiische Richter

Montag, den 4. Juni

THE CHICAGO BAR ASSOCIATION
CARL R. LATHAM, President
100 N. La Salle Street

German

Политические боссы должны назначать,
или народ должен выбирать судей?

БЕСПАРТИЙНАЯ ОРГАНИЗАЦИЯ «ЧИКАГО
БАР АССОЦИЭШН», СОСТОЯЩАЯ ИЗ
4500 ЧЛЕНОВ, РЕКОМЕНДУЕТ ДЛЯ
ИЗБРАНИЯ СЛЕДУЮЩИХ ЛИЦ:

- ☒ HOWARD W. HAYES ☒ WALTER P. STEFFEN
☒ DANIEL P. TRUDE ☒ MARTIN M. GRIDLEY
☒ CHAS. CENTER CASE ☒ JOSEPH SABATH
For Vacancy
☒ JAMES J. BARBOUR

Избирайте независимых, безбоязненных,
способных, беспартийных судей

В понедельник 4 июня

THE CHICAGO BAR ASSOCIATION
Carl R. Latham, President.

Russian

ואלען די פארטייע
באסעס אפאנימען
אדער דאס פאלם ווא
טרוועקלען דזשאדיטעס?

נים פארטייאישע רעקאמענדאציעס פון די
שיקאגא באר אסאסיאישן

דאס באשטימט פון 4500 מיטגלידער

- ☒ HOWARD W. HAYES
☒ DANIEL P. TRUDE
☒ CHAS. CENTER CASE
☒ WALTER P. STEFFEN
☒ MARTIN M. GRIDLEY
☒ JOSEPH SABATH
FOR VACANCY
☒ JAMES J. BARBOUR

ערקלערט וועלכעס מען זאל
נעמע פארטייע נים-פארטייאישע
דזשאדיטעס באשאפן. דאנן 4

די שיקאגא באר אסאסיאישן
CARL R. LATHAM, PRESIDENT
Jewish

Czy Polityczni Bosowie Mają
Naznaczać--Czy Obywatele Mają
Wybrać Naszych Sędziów?

POLECENI PRZEZ BEZPARTYJNA**Chicago Bar Association**

Złożoną z 4,500 Członków

- ☒ Howard W. Hayes ☒ Walter P. Steffen
☒ Daniel P. Trude ☒ Martin M. Gridley
☒ Chas. Center Case ☒ Joseph Sabath
For Vacancy
☒ James J. Barbour

Wybierzcie Odwaznych, Niezależnych,
Bezpartyjnych Sędziów

w Poniedz. 4 Czerwca**The Chicago Bar Association**

CARL R. LATHAM, President

Polish

4. On the showing of space in news columns or in amount of advertising taken, the Bar Association is clearly at a disadvantage as compared with candidates who cultivate the particular bloc and "favorite-son" sentiments. This is easily seen in the fact that over a period including several campaigns the Association received little news mention. It inserted paid advertisements in only one issue of each paper, during a single campaign (1928), whereas the political parties, "favorite sons," and other candidates advertised extensively during many campaigns, and got many columns of news and portraiture.

5. In maintaining its traditional position of making recommendations on impersonal considerations, the Association is also at a constant disadvantage in those atmospheres which are controlled almost exclusively by racial loyalties. This is particularly true among the Negro constituency. Only two of the several racial papers studied showed any disposition to give both sides of a question or to pick its candidates on the basis of individual fitness.

6. It is clear, however, that the Bar Association has not made the most of its opportunities in cultivating co-operation among the foreign-language press or in acquainting voters through these channels with the principles underlying its activity.

THE NEIGHBORHOOD PRESS

The neighborhood press has several points in common with the foreign-language publications. Both groups practice "smalltown" journalism. They develop to the greatest possible extent a "personal" contact with their readers and with the activities of the local constituency. These publications also give much attention to the local leaders of the political organizations and to native sons who aspire to the Bench. In addition to boosting local interests and local men, this policy enables an aggressive publisher to reap a harvest in political advertising at election time. The "political rate" is usually double the ordinary display rate. The ward committeemen, invariably, are each "good for" a full page or a double spread advertisement in behalf of their respective organization slates. Individual candidates, and particularly local men on the tickets, will extensively utilize the columns of the neighborhood press as media for political advertising.

On two scores, the Association thus operates at a disadvantage. Sheer localism is fundamentally opposed to the abstract concept of judicial fitness for which the Association stands in principle. With no issue or interest to advance, other than that of the fitness of the candidates whom it has indorsed, the Association cannot hope to compete on even terms with the organization leaders and local candidates who have cultivated the local loyalties for political purposes.

CHAPTER XXII

THE ATTITUDE OF THE VOTERS AS A FACTOR AFFECTING THE INFLUENCE OF THE BAR

The desirability of a favorable attitude on the part of the voters toward the Bar Association in determining its influence in judicial selection is too obvious to need elaboration. It is important, therefore, to inquire what attitudes various elements in the electorate have indicated, what their voting strength is, and what likelihood there is of them acting on the Association's advice.

In Table XLVIII the voting strength of various elements in the Chicago electorate has been estimated. The elements dealt with include the primary human cleavages which are based on nationalistic, racial, religious, and economic interests. On account of concentration into definite constituencies, groups having these cleavages have great political strength. This strength is capitalized by the organization leaders in "building up" party tickets.

WHO ARE THE ELECTORATE?

From Table XLVIII it appears that in 1932 only 77.9 per cent of the persons legally eligible to register (i.e., qualify for voting) were actually enrolled on the election poll books. This fact of itself is significant, for at a time when popular interest in elections was at a peak, more than 400,000 persons, or in excess of one-fifth of the adult citizenry, had failed to qualify as electors. The margin required for a political organization to win at the polls was thus narrowed. Since this inactive element of the potential electorate is presumedly "independent" politically, and therefore the type of citizen to whom the nonpartisan advice of the Bar Association should appeal, the Association's field of action was accordingly narrowed.

Nationalistic and racial elements.—While there were 1,226,891 native-born white adults, or 81.9 per cent of the registered electorate, only 506,245 of this number, or one-third of the electorate, were truly "native" Chicagoans (i.e., native-born of native parents). The aggregate constituencies of foreign extraction comprise 82.4 per cent of the Chicago electorate.

The United States census distinguishes more than thirty nationalistic and racial groups in Chicago. Nine of these have a potential voting strength in excess of 75,000, as follows: Polish, German, Jewish, Negro, Scandinavian (grouping Norwegians, Swedes, and Danes together), Irish, Italian, Russian, and Czechoslovak.

Religious groupings.—Dividing the religious elements into Roman Catholic and other, the Roman Catholics are estimated to have had in 1926 a voting strength of 548,000 persons, or 36.7 per cent of the eligible electorate. Ten white Protestant sects, with 588 church units, had a voting strength of 179,394 persons, or 12 per cent of the registration.

Labor.—The importance of the "labor" element in Chicago politics is indicated by the number of "workers," which in 1930 was estimated at 1,330,000. The Chicago Federation of Labor, the active, organized element of this group contained 293,546 members, or nearly 20 per cent of the city's entire voting strength. In addition to the common ties of unionism, the "labor" group has the solidifying agencies of a central organization, a weekly journal and a radio station.

Civic groups.—The element of the Chicago population aligned with so-called civic or public-purpose organizations is suggested by information published in 1927. More than 400,000 (excluding the Federation of Labor) were reported to be affiliated with city-wide groups and 257,000 had membership in local community organizations. While the number of such memberships changes from year to year and varies with the economic status of the community, the conclusion can be drawn that a considerable part of the population is affiliated with some organized "civic" movement, using that term in its broadest sense. This element, however, is utterly lacking in unifying agencies.

INDICATIONS OF THE VOTERS' ATTITUDES TOWARD THE BAR ASSOCIATION

Obviously, any attempt to indicate what attitude a large group of voters has toward the Bar Association is a hazardous undertaking. It is possible, however, to obtain suggestive inferences and expressions of individual opinions which indicate in a general way whether the attitude of a group is favorable or unfavorable.

Nationalistic, racial, and religious groups.—The traditional solidarity that characterizes the great nationalistic, racial, and religious groups justifies the inference that in a political contest the members of these great constituencies would vote for a member of their own race, nation, or religion first, regardless of whether he had Bar indorsement, and for a Bar indorsee or any outsider, second. This is almost an aphorism of the political jungle. It motivates all political planning, slate-building, campaign strategy, etc. Emotional ties of blood, heritage, locality, or belief are stronger than the intellectual bonds of impartial appraisal of fitness, even for so important an office as the judiciary.

In chapter XXI, instances were noticed of appeals along racial and nationalistic lines in the foreign-language newspapers. While

TABLE XLVIII
ESTIMATED VOTING STRENGTH OF VARIOUS ELEMENTS IN THE
CHICAGO ELECTORATE

Element	Estimated Strength	Percentage of Registered Electorate
I. Persons twenty-one years and over legally qualified to register in 1930 (Note A) Men, 984,880; Women, 937,635.....	1,922,515	.....
II. Actual number of registered electors in Chicago in 1932 (Note B) Men, 851,300; Women, 647,014.....	1,498,314	100.0
III. Composition of population qualified to register in terms of native or alien origin, as of 1930 (Note C)		
1. Native white of native parentage.....	506,245	33.8
2. Native white of foreign or mixed parentage.....	720,646	48.1
3. Foreign-born white, naturalized.....	513,516	34.3
4. Native-born whites.....	1,226,891	81.9
5. White of foreign extraction.....	1,234,162	82.4
IV. Major nationalistic and racial groups: An approximation of their potential voting strength as of 1930 (Note D)		
Polish.....	262,621	17.5
German.....	247,347	16.5
Jewish (as of 1926*).....	212,680	14.5
Negro (actual).....	165,959	11.1
Scandinavian.....	147,446	9.8
Irish.....	126,662	8.5
Italian.....	119,010	7.9
Russian.....	111,075	7.4
Czechoslovak.....	79,895	5.3
British (England, Scotland, Wales).....	69,938	4.7
Lithuanian.....	41,828	2.9
Canadian.....	38,953	2.7
Austrian.....	36,294	2.4
Jugoslavia.....	21,131	1.4
Hungary.....	19,911	1.3
Netherlands.....	16,772	1.1
Greece.....	17,266	1.1
V. Miscellaneous groups (Note E)		
Roman Catholic (256 units).....	548,140	36.7
White Protestant (10 sects, 588 units).....	179,394	12.0
Aggregate of religious bodies (1499 units)†.....	888,558	59.3
Workers in Chicago (as of 1930).....	1,330,118	88.8
Workers affiliated with Chicago Federation of Labor in 1930.....	293,546	19.6
Chicago civic agencies (as of 1926)		
105 city-wide groups.....	424,895	28.3
344 neighborhood groups.....	257,231	17.2

NOTE A.—Computed strength: 2,209,514 persons twenty-one years and over, minus 286,999 (foreign-born whites with first papers, plus 168,815 aliens and 21,939 unknowns—all ineligible to vote) equals 1,922,515. Source: *United States Census, 1930, III, Part I, 628*.

NOTE B.—Source: *Chicago Daily News Almanac, 1933, p. 735*.

NOTE C.—Source: *United States Census, 1930, III, Part I, 628*.

NOTE D.—Computation of estimated strength for each group as follows: Data on all ages for "foreign-born whites" and "native whites of foreign or mixed parentage" were totaled, and then were multiplied by the percentage factor 65.44, which represents the ratio of population twenty-one years and over to the entire population in Chicago. Source: *United States Census, 1930, III, Part I, 638-44*.

*Estimate for Jewish is from *United States Census of Religious Bodies, 1926, p. 389*, similarly modified.

NOTE E.—Sources: Religious bodies from *United States Census, 1926, p. 389*.

†Negro data omitted from this figure; workers and C. F. of L. from *Collective Bargaining* by C. L. Christianson (Chicago: University of Chicago Press, 1933); civic agencies, from *Chicago Civic Agencies* (Chicago: University of Chicago Press, 1927), pp. 30 and 191.

instances were cited where editors had regarded the Bar's recommendations as valuable sources of information that should be considered, and while it is hazardous to generalize, the tendency among voters in these constituencies is either to disregard the Association's advice or to take a frankly hostile attitude, especially if a "favorite son" has not been indorsed. In fact, candidates have made political capital out of the withholding of Bar indorsement.

An inkling of the Negro attitude toward the Association is given by the following communication, addressed to it during the 1933 election by the Chicago Branch of the Association for the Advancement of the Colored People:

Some time ago we registered with your organization a protest against the exclusion policy maintained in respect to the admission of qualified Negro members of the Bar. At this time (June 1, 1933) we register protest against the incursion of representatives of your organization into the Negro district asking support of candidates endorsed by you for the Judiciary.

We feel that the axiom—"He who comes into equity must come with clean hands"—obtains in this case. We have advised all churches and their pastors of the attitude of your Association toward Negro members of the Illinois Bar, and while we feel that some of your recommendations may be good, we also feel that you should not place your recommendations on the high ground of "social justice and purity" when you are so obviously unfair, un-American, and devoid of social purity in the matter of admission of Negroes to your organization.

We register this protest with you and have taken the action that we have in advising all Negro ministers, and many white ministers who are liberal and fair, because we are truly and sincerely interested in "social justice."

While the Association has been charged with being "a hot-bed of anti-Semitism," it is doubtful if this view characterizes the Jewish group as a whole. The Jewish press tends to adopt the provincial nationalistic viewpoint when a choice is presented between an unindorsed "favorite son" and a candidate approved by the Association. On the other hand, a considerable number of the Association's members are Jewish, and to the writer's knowledge more than one Jewish organization has co-operated in the Association's campaigns.

So far as is known, the Chicago Church Federation (Protestant) is the only religious body that has actively evinced interest in the Association's projects. In 1933 it gave collateral co-operation through its commission on political action. The pastors were requested to offer prayer from their pulpits for the success of the "right" candidates. Church clubs and societies have distributed the "marked ballots." On the morning of election day, June 5, 1933, many Protestant churches in all parts of Chicago rang their bells to remind the community to go to the polls, the assumption being that the church members would vote for the "right" issues on the ballot—non-repeal candidates for the state convention and the "Bar Association ticket" for the judiciary. Two hundred thousand

marked ballots were also distributed by women's organizations in one thousand churches.

Labor.—While the Chicago Federation of Labor in recent years has not come out openly against the Association (see p. 95 for evidences of co-operation), in the 1909 Circuit Court campaign the Federation indorsed a full ticket for the reason, explained by John Fitzpatrick, its president, which follows:

We did not intend to indorse anyone until the Bar Association raised the issue. That body, which furnishes the lawyers to the corporations that are fighting organized labor, has seen fit to indorse the injunction judges and to condemn the men in whom labor has a friendly interest. If that is to be the issue, we ought to meet it fairly and not allow the Bar Association to elect the judges in this county.¹

Civic agencies.—The attitude of certain groups may be inferred by the co-operation which they have given in financing the Association's publicity campaigns and in distributing marked ballots to their members. In the 1933 contest, for example, it is known that nearly one-half of the campaign fund was contributed by laymen and business interests. We may also recall that one hundred forty-seven firms, almost all of which were probably affiliated with the Chicago Association of Commerce, distributed 60,000 marked ballots among their employees. One hundred thirty civic and lay groups distributed more than 100,000 marked ballots to their members. A woman's campaign committee distributed 234,785 ballots to woman's organizations.

But as a rule it can be shown that such special interest is the direct result of educational work carried on in advance of the campaign. For example, the Union League Club, the Rotary Club of Chicago, the City Club, and the Chicago Woman's Aid have adopted resolutions indorsing in principle the plan of distributing in advance of each primary or election the Association's recommendations as nonpartisan information for their members. Each resolution was careful to declare, however, that the organization itself did not recommend candidates.²

Organizations which have distributed the recommendations in one or more campaigns have included: the Chicago Association of Commerce, the Woman's City Club, the Chicago Woman's Club, the

¹*Chicago Daily News*, May 17, 1909.

²Resolution adopted by the Union League Club of Chicago at special meeting January 22, 1931:

"To combat crime and to secure the proper administration of both civil and criminal justice, it is essential to elect judges of the highest character and ability. To this end, the voters should have reliable information concerning judicial candidates.

"Such information can be obtained from the Chicago Bar Association. The lawyers know the candidates and want good judges before whom to try their cases.

Cook County League of Women Voters, Union League Club, Better Government Association, the Voters' Clearing House, the Christian Citizenship Council, and the Fifty-fifth Street Business Men's Association.

As in the case of certain newspapers, organizations have occasionally taken the Bar Association's list as a starting-point and have made exceptions to its slate for stated reasons. Thus, on May 19, 1933, the action of the Chicago Real Estate Board was announced as recommending "a slate of judicial candidates identical with the indorsements of the Chicago Bar Association except in two instances."³

While some groups are willing to co-operate to the extent of presenting the recommendations as information in a specific campaign, many more hesitate to adopt the plan as a permanent policy.

In several years of contact with civic agencies the writer has found that unless a group has been organized for the specific purpose of supporting candidates, it usually will studiously avoid any action that can be construed as "political." The reasons for this are probably one or more of the following: (1) the organization was founded to promote policies, not personalities; (2) the organization as such cannot participate in politics, but its members may do so as individuals; (3) partisan contests endanger the solidarity of "nonpartisan" organizations; (4) it is embarrassing to be defeated—and the odds are against victory, when you are pitted against the political machines; (5) "politics is rotten"; (6) "We can't be bothered"; (7) "We can't commit our organization for the future."

The attenuated reasoning of the Association's appeal, the impersonal character of its plea, and the nonpartisan traditions of organizations which are otherwise sympathetic, are also considerations which result in the hesitant attitude of many groups toward the Association's recommendations.

"The Chicago Bar Association, prior to each judicial primary and each judicial election, makes, through competent committees, a thorough investigation of each candidate. It mails to its members a printed report giving information about each of them. It then determines, by a secret ballot of its members, what candidates shall be recommended to the voters. Its recommendations are always nonpartisan.

"The Union League Club does not recommend candidates for public office. It believes, however, that for voters who have no personal knowledge of judicial candidates, the recommendations of the Chicago Bar Association are the safest guide. It believes that the widest publicity should be given to these recommendations. It believes that when their value comes to be understood by the voters we shall elect more of the better class of judges.

"THEREFORE, BE IT RESOLVED, that before each judicial primary and before each judicial election, this Club send to every resident member a copy of this resolution, together with a copy of the recommendations of the Chicago Bar Association."

³*Chicago Tribune*, May 19, 1933.

The groups which have co-operated in past campaigns contain only a minor fraction of the total vote. The attitude of such groups could be an important aid in extending the Association's influence. Although the groups now lack unity, their aggregate membership is numerically great. Their widespread existence over the city and their personal, "town meeting" contact in the majority of local communities contains the basic support necessary to the sustained success of any civic movement. In effect, it could become truly the life blood of the present idealistic skeleton.

THE VIEWS OF INDIVIDUAL CITIZENS

On the assumption that nonpartisan civic groups would at least be "sympathetic" toward the Bar Association's efforts, the writer addressed a letter and inquiries to the presidents and secretaries of 875 civic groups⁴ to ascertain their (1) interest in the election of a well-qualified judiciary, (2) their information concerning the objectives of the Chicago Bar Association, and (3) their disposition to follow the Association's recommendations.

Two general inquiries were made: (1) The various sources from which the person received useful information concerning judicial candidates and (2): a) "Do you now use the Bar Association's recommendations?" and b) "Would you be guided by them if the information were more easily available?" As a final point, the person's ideas were invited concerning better ways to inform the voters regarding the qualifications of candidates for judicial office.

From 1,750 letters mailed, of which 41 were returned as undeliverable, a total of 418 replies was received. This was a net return of 24.5 per cent. Considering the fact that only one letter was sent, with no "follow-up," and that the writer was a total stranger to about 99 per cent of the persons, the number of replies was gratifying.

Sources of information.—Only slightly more than one-half of these 418 citizens consciously obtained their information regarding candidates from the Bar Association (see Table XLIX and Chart VIII). While some of the twenty other sources indicated derive their views in whole or in part from the Association, it is significant that only 54.1 per cent of them were evidently enough aware of the Association's practice of indorsing candidates to identify it as a source of information at election time.

The figure of 54.1 per cent (those who consciously received information from the Bar Association's recommendations) is roughly confirmed by the direct questions: "Do you use the Bar Association information?" and "Would you use it if you had it?" These questions more effectively disclose the attitude of these citizens toward

⁴See the *Chicago Daily News Almanac and Year Book*, 1931, pp. 847-72.

the Association. Thus while 61 per cent used it, 10 per cent of the number qualified their replies, and 31 per cent gave an adverse verdict. The replies to the second part show a shrinkage in comparable questions, but this may be accounted for in part by the larger number who evidently believed the two questions had no essential difference and therefore failed to reply to Part "B".

TABLE XLIX
SOURCES OF INFORMATION OF SELECT LIST OF 418 CITIZENS CONCERNING
QUALIFICATIONS OF JUDICIAL CANDIDATES

Source of Information	Indications of Specified Source	
	Number	Percentage of Total
Personal friends.....	235	56.2
Chicago Daily News.....	234	56.0
CHICAGO BAR ASSOCIATION.....	226	54.1
Chicago Tribune.....	218	52.2
Personal acquaintance with candidate.....	198	47.4
Neighborhood newspapers.....	110	26.3
Better Government Association.....	102	24.4
Local Improvement Association.....	100	23.9
Political meetings.....	99	23.7
League of Women Voters.....	70	16.7
Chicago Herald and Examiner.....	65	15.6
Political party workers.....	59	14.1
Chicago Evening Post.....	49	11.7
Cook County Bar Association.....	48	11.5
Woman's City Club.....	38	9.1
Chicago Daily Times.....	23	5.5
Union Labor Press.....	22	5.3
Chicago Woman's Club.....	22	5.3
Foreign-Language Press.....	18	4.3
Better Judges League.....	13	3.1
Chicago Evening American.....	7	1.7
Other sources.....	55	13.1

As a means of approximating the essential intent on the specific point of their attitudes toward the Association, the two sets of replies were tabulated for corresponding points of the two parts. These comparisons are presented in section "C" of Table L. Thus, 199 persons replied "Yes" to both A and B; 40 replied "Yes" to A and left the "Yes" of B blank; 32 said, in effect, that they did not use Bar advice, but would do so if they had it, etc. On this basis the total number of favorably disposed citizens was 283, or 69 per cent, while 110, or 26 per cent, were disposed *not* to accept Bar advice, and 25, or 5 per cent, apparently weren't acquainted with the activity at all.

The fact that more than one-fourth of the voters in a group reasonably supposed to be at least "sympathetic" to the Association's objectives were definitely antagonistic is truly amazing. This led us to analyze the replies more in detail.

CHART VIII

CITIZENS' SOURCES OF INFORMATION CONCERNING JUDICIAL CANDIDATES

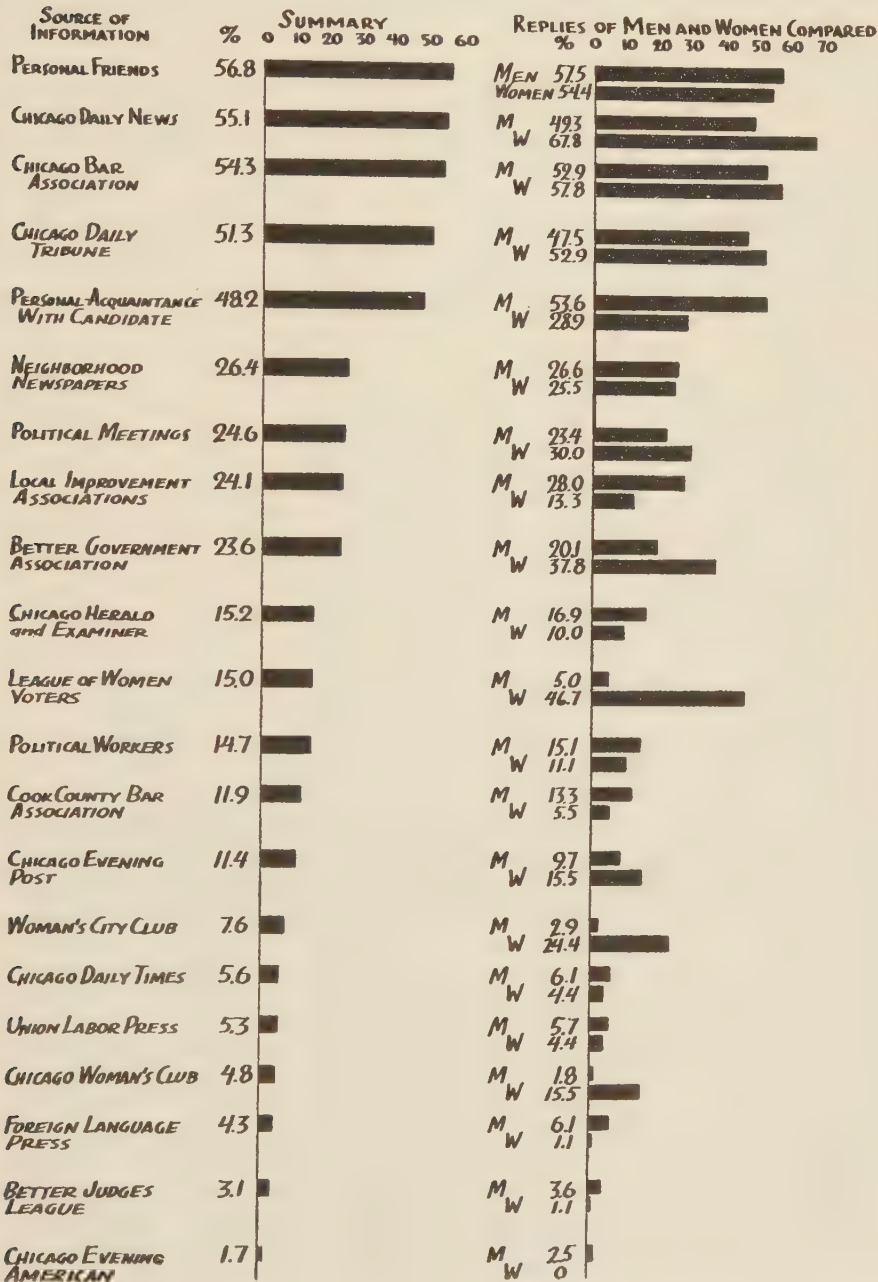


TABLE L

ATTITUDES OF 418 OFFICERS OF CIVIC AGENCIES TOWARD THE CHICAGO
BAR ASSOCIATION'S RECOMMENDATIONS CONCERNING
JUDICIAL CANDIDATES

Group	Number of Replies			Percentages		
	Men	Women	Total*	Men	Women	Total
A. Already using information						
Yes.....	140	52	212	49	50	51
Yes, qualified.....	30	11	42	10	11	10
Total "Yes".....	170	63	254	59	61	61
No reply.....	22	11	34	8	11	8
No.....	95	29	130	33	28	31
Total.....	287	103	418			
B. Would use information if they had it						
Yes.....	133	58	207	46	56	50
Yes, qualified.....	22	12	35	8	12	8
Total "Yes".....	155	70	242	54	68	58
No reply.....	47	18	69	16	17	16
No.....	85	15	107	30	15	26
Total.....	287	103	418			
C. Attitudes summarized†						
Favorable.....	182	81	283	63	79	69
None expressed.....	17	8	25	6	8	6
Unfavorable.....	88	14	110	31	13	26
Total.....	287	103	418			

*Includes 28 unsigned replies.

†This summary is based on the replies to *both* parts of the inquiry.

Nearly one-half of the replies included a written comment. Many of these disclosed the person's attitude toward the Association. Others gave their suggestions for improving the means of selecting judges or of appraising the qualifications of individual candidates.

Confidence in the Bar.—Eighteen persons expressed confidence in the Association in the following terms:

a) Four persons affirmed their confidence in the "published reports by Chicago Bar Association."

b) "Chicago Bar Association has always been fair with its recommendations," was the opinion of six persons.

c) "Recommendations of the Bar Association are the most reliable to be found. Easily available in leading newspapers."

d) "The Bar Association is reliable, and should give its opinion over the radio."

e) "The Bar Association should be the one to select among their members, legitimate and competent men, answerable only to them."

f) "The Bar Association should put its stamp of approval on the candidate, but should not have the right to name the candidates."

g) "Candidates might be selected by Chicago Bar Association instead of by political party leaders. If elected, such jurists would be free to exercise their good judgment as might be befitting."

h) "Give Bar Association findings to all candidates—but not the Bar's primary vote."

i) "Let Bar Association's Committee survey the acts of all Cook County or Municipal Court judges with the same fearlessness exercised by the statisticians of the Municipal Voters' League."

j) "Have Bar Association recommendations more widely published in the press."

Distrust of the Association.—Twenty-two persons were frankly distrustful of the Association's recommendations. Ten of these based their view on the Association's failure to indorse Judge John H. Lyle in the preceding election (November, 1930). They said:

a) "Give us more Judge Lyles," demanded two dissenters.

b) "Use case of Judge Lyle" was the declaration of distrust from one person.

c) "Need more like Lyle. Chicago Bar Association does not recommend him," was the sentiment of five others.

d) "Adopt the same methods used by Judge Lyle who is out for the interest of the people regardless of party affiliations."

e) "The Bar Association should wake up to the fact that a *strict* interpretation of the law is *not* the wish of the majority nor to the best interests of our country. Refer to Judge Lyle."

Other expressions attesting lack of confidence in the recommendations were:

a) "Action of Bar Association in the past does not justify full confidence."

b) "Bar recommendations are very narrow. It views the candidate in a legal way only."

c) "It should give unbiased opinions upon the individual candidates regardless of political parties."

d) "As it is today, each member of the Bar Association chooses to favor for election the judge who would favor him in his profession at the court."

e) "The better and abler men in the Bar are too busy or uninterested to vote in the Bar recommendation elections and leave it to a few who use the Bar to further their own selfish interests."

f) "If the civic agencies didn't have some ax to grind, the public would have more confidence in their choice."

g) "Information about candidates is not sufficiently candid and outspoken."

h) "I have liked to have confidence in the Bar Association's recommendations but find that the candidates for judges are in the habit of canvassing members of the Bar to get their vote. I have heard lawyers say they could not refuse their consent, mainly for business reasons, although they were often satisfied of the candidate's unfitness."

i) From an attorney and a member of the Association: "Very seldom do I follow the information furnished by the Bar Association because I have almost consistently opposed their theory of recommending judicial candidates. The committee that dispenses the information in the Bar Association is what might be termed a self-perpetuating committee. Unless a person has an 'in,' I don't believe he gets a good recommendation from the Bar, worthy as he may be, and on the other hand if a candidate has a sponsor who is high in

the ranks of the Bar Association it is my honest opinion that he gets an indorsement, in many instances a better indorsement than his ability warrants."

j) "The Bar Association, like any other group of professional or business persons, is obviously constituted in large part of individuals whose views I could not accept. Hence the opinion of that body as a whole is one I would receive with a large measure of caution."

Twenty-two replies implied a lack of confidence in the Association by urging sources of information regarding judicial candidates other than the recommendations of the Association.

The ill-repute of the Bar as a whole.—The head of a prominent club, which is dedicated to promoting the principles of the Republican party, expressed a personal view, following the November, 1932, election, that the public lacks confidence in the lawyers and that the Association could use its money to better advantage for new books in its library. He said:

The daily press and the Chicago Bar Association made the fight of their lives to have the Bar Association judicial ticket put over. As usual, the public listened then went to the polls and forgot all about it. In our humble opinion the Chicago Bar Association should omit trying to teach the public how to vote and for what. The public, we are sorry to say, lack confidence in the lawyers and who can blame them? We would advise the leaders of the Chicago Bar Association to save their money for new books for the library and wait until they are asked by the public to express an opinion on the merits of judicial candidates. We have noticed that volunteered advice is very seldom welcomed by the best of regulated families. Not but what the Bar Association meant well, but the public don't want advice and apparently will not accept it on matters that they believe they are better qualified to answer.⁵

This same view was expressed by "Skeptical" in an anonymous "Letter to the Editor" of the *Chicago Daily News*, after the Circuit Court election in June, 1933. It said:

. . . Perhaps many voters were like the writer so far as the recommendations of the Chicago Bar Association were concerned. Perhaps they wondered who would recommend the Bar Association. Our newspapers are almost daily filled with accounts of the doings of various attorneys in receivership and other cases. To the laymen the newspaper accounts seem to indicate that these attorneys are somewhat "unethical" in their fees, etc. Is it not a fact that most, if not all of these attorneys, are members of the Bar Association, and if such is the case why doesn't the Bar Association "clean house" and then after displaying to the public "a nice clean washing" come forth with its recommendations to the voters. That method . . . would be the best way to influence the voter. Are the judges to whom the Bar Association objected any worse than perhaps many of the Association's members? The writer was unable to decide on whom to vote for, so he passed up the judicial ballot.

In a conference of representatives of civic organizations in which the writer participated, one delegate wrote on the card provided to record requests for marked ballots, speakers, etc., "Clean up the Bar Association. To that end would be glad to help!"

⁵Frederick A. Rowe in the *Hamiltonian*, January, 1933, p. 17. The commentator is an attorney and a member of the Chicago, Illinois State, and American Bar associations.

While these expressions are isolated instances, they undeniably indicate a distrust of the profession widely held by the lay public. The Association might have allayed this distrust had it advertised its three-year suit to disbar the attorneys in the Sanitary District pay-roll scandal, its reports on the receivership racket in the state and federal courts, the fact that all disbarment proceedings originating in Chicago result from the work of its Grievance Committee, and that it passed over a first vice-president in selecting a president in 1933 because he had been charged with unethical conduct in receivership proceedings! Whatever the motives and evidence underlying the Association's recommendations, its purposes will probably always be discounted by a large section of the electorate, as well as impugned by the activities of the criminal-shyster elements within the ranks of the profession.

SUMMARY

From the foregoing pages it appears that:

1. The basic assumption of the Bar Association's procedure places great importance upon the attitude of the voters.

2. The Chicago electorate comprises many nationalistic, racial, and religious blocs, as well as many disillusioned voters, and the attitude of these constituencies traditionally tends to be hostile to the findings of the Association, no matter how impartial its findings may be.

3. The "woman's vote" has shown a co-operative tendency, especially in campaigns involving the social aspects of the judicial function.

4. Organized civic groups have tended to co-operate with the Association, but the amount and extent of the co-operation has been limited, due to barriers of inertia, expediency, theoretical non-partisanship, and political candidacies.

5. An inquiry among a selected group of citizens who were assumed to be generally "sympathetic" to the Association's objectives showed:

a) That slightly more than one-half of them consciously derived their information regarding judicial candidates from the Bar Association.

b) That one-half of them did use and would use the Bar's advice, while 10 per cent more would accept the recommendations with reservations.

c) Approximately one-quarter of the group declined to accept the information under any circumstances.

d) While a limited number unreservedly expressed confidence in the Association, a larger group distrusted or disregarded the recommendations for various reasons.

CHAPTER XXIII

PARTISAN POLITICS AS A FACTOR AFFECTING THE INFLUENCE OF THE BAR

THE RELATION OF PARTY ORGANIZATIONS TO JUDICIAL SELECTION

In determining the extent to which partisan politics affects the influence of the Bar, it is necessary to examine the following matters: (1) the function of political parties in the selection of the judiciary; (2) the practices that parties have adopted in exercising that function; and (3) the practical effects of party activities upon the behavior of the judiciary.

If the rôle of the political parties were limited solely to the original selection of candidates, the problem would be comparatively simple. But under the short-term, elective system the judicial incumbent is forced to become a perpetual candidate, and this requires him to be constantly associated with his sponsor, a party group. Since the party organizations also concern themselves with other phases of judicial administration, it becomes necessary to consider the ramifications of the political organizations which operate under the party system, and to indicate how the various activities, in addition to the function of selecting candidates, augment their rôle and influence.

In considering these matters it will be helpful to remember that the party organizations and the Bar Association are likely to regard the selection of the judiciary from diametrically opposed points of view. The parties consider that it is their responsibility, as well as their privilege, for they are legally constituted for this purpose, and a century of custom supports their claim. The Bar Association, on the other hand, contends that the courts must be independent and impartial, and that the judiciary should exemplify certain qualities of mind and character that will enable it to maintain this independence and impartiality. The Association argues, moreover, that the past record of the political parties is no guaranty whatever that they will often sponsor the most highly qualified candidates for the Bench; and that under modern metropolitan conditions, the electorate as a whole lacks the means of obtaining the information needed to vote discriminately.

As a practical matter, the Bar Association has sought to work *through* or *with* the party organizations or has been forced to work *against* them. Because it has seldom chosen to sponsor candidates of its own, the rôle of the Bar has become secondary, incidental, advisory. The party organizations, on the other hand, occupy a

primary position, which is strengthened by reason of certain footholds in the selective process.

PARTISAN FOOTHOLDS IN JUDICIAL SELECTION

Four practical and legal footholds of the party organizations may be listed briefly as follows: (1) the two-party tradition that has long dominated Cook County elections; (2) the development of permanent organizations within the parties to manage electoral affairs; (3) the entrenched positions of the party organizations resulting from regulatory statutes; and (4) the system of sponsoring candidates.

1. *The two-party tradition* has accustomed a large part of the electorate to vote for candidates of either major party. Legal restrictions have hampered minor parties, and especially independent political movements. Thus aspirants for the judiciary are practically forced to seek sponsorship from one of the major parties. The two-party tradition has also tended to dwarf the Bar Association's non-partisan recommendations.

2. *The development of permanent organizations* within the major parties has enabled them practically to monopolize the nomination and election of judges.

3. A third foothold is *the entrenched position of the party organizations* in all matters connected with the elective process. Their position is occasioned, of course, and properly so, by the legal authority accorded the major parties to operate the local election machinery. Legal provisions originally designed to regulate the election process have had the effect of making the organizations' position almost impregnable. For example, the Massachusetts or office-group form of ballot, which would eliminate the "party circle," would cost less, but would destroy "straight-ticket" voting, which facilitates organization control.

HOW THE PARTY ORGANIZATIONS CONTROL JUDICIAL SELECTION

The sponsorship system.—The aspirant for judicial office must thus not only pick the proper party, but must also have a political sponsor powerful enough to "put him across" in the party caucus, convention, or primary. This system constitutes the fourth foothold of the parties in judicial selection. No candidate is nominated or elected without such sponsorship.¹ The barrier thus erected by the sponsorship system against nonpartisan efforts or appeals as epitomized by the Bar Association is obvious.

¹Said one party leader to the writer: "You can put it down as a rule that a candidate hasn't even a chance of being elected unless he is properly sponsored." Another leader regarded the writer's inquiry "Can a candidate without political connections be elected?" as the height of academic innocence. "He hasn't the chance of the proverbial snowball in hell, nor as much," was the caustic reply.

The barrier becomes insuperable when the major party organizations, or influential factions within them, unite on the same ticket, as has been done in several judicial contests. Under a coalition rule, the balloting of the sovereign voter becomes an empty and futile gesture.

Even more insidious, however, is the bond of obligation that this system creates between the sponsor and the candidate for judge. The bond is not defined by law but is a human tie that results from close association. Its deeply personal nature serves the more to reinforce its obligatory character.

From the standpoint of the judge, the bond is likely to be a feeling of friendship and personal loyalty motivated by gratitude to the one responsible for his political success. From the viewpoint of the party representative, the tie may be one of friendly interest, but it may also become an active relationship through which the interests of the organization can be advanced with the co-operation of the judge. Unless the political sponsor has a high sense of public morality, the way may be opened for improper, if not actually corrupt, suggestions to the judge.

In this sense the system of political sponsorship has grave possibilities for impairing both the independence and integrity of the Bench. The inevitable effect is to set up the party organizations as the arbiters of official destinies and as the agencies which have the last word in determining the character of candidates to be nominated.

The political sponsors are usually individuals who, through long activity in or association with a neighborhood or a population group, obtain "followings" which accept their leadership in political matters. They are in most cases the ward committeemen or district representatives of the political parties. Collectively, these committeemen constitute the official governing machinery of the party organizations. Their voting strength in the party councils is determined by their ward vote polled in the party primary² in which they were elected. Occasionally, sponsors may take no part in active politics, but derive their power because they control elements of strength that can aid or perhaps defeat an organization. Newspaper proprietors and large contributors to campaign funds are examples of this type of sponsor.

The process of sponsorship is essentially the same for slates in the party primaries and in the general elections. In the party primary the candidate's name is placed upon the ballot by petition. Almost any candidate with sufficient persistence can qualify. But the successful candidates as a rule are those who have been picked

²See the *Chicago American*, January 22, 1934, for relative voting strength of Republican party committeemen. In the April, 1934, primary the total vote cast for ward committeemen in both parties was 53.2 per cent of the registered electors.

by a party organization and enter the contest with its sanction³ and support. Seldom is an organization's slate broken in a party primary.

Nominations for the election of judges for the Supreme, Circuit, and Superior courts, however, are made by the parties in county or district conventions. The party committeemen constitute the convention and have sole responsibility for these nominations.

The technique of slate-making, as described to the writer by a party leader, is substantially as follows:

A group of leaders meet to prepare a tentative slate. Since the object is to win the election, the group strives to build a ticket that will attract support. In these negotiations each candidate has a sponsor and each nomination is the result of shrewd dealing by the sponsor and cold-blooded appraisal of the candidate's vote-pulling power.

What factors guide the slate-makers? The ticket must be "balanced," i.e., it must contain candidates from various sections of the city or county. It must be representative of the leading nationalities or races and religions, for the politicians have found that these two loyalties are potent vote-pulling factors. The candidate's record of party service is also an important item, since a nomination is not only a recognition of a candidate's political strength but also a reward for party service.

In this respect it is instructive to notice in Table LI the fields of service from which the Chicago judiciary has been recruited in the past quarter-century. This analysis reveals two significant findings: (1) the comparatively small number of judges (26 per cent) who were recruited from private practice indicates that the route to the Bench lies through some public office; and (2) without a single exception, positions in these offices from which the large majority of judges have been recruited are controlled by political organizations. Prior to their elevation to the Bench, three-fourths of all judges during the period covered, served in offices to which appointment was governed by the political party organizations.

³The power of the ward committeeman in judicial nominations is revealed in an incident related to the writer by a person who conducted the interview. A slate-making session of one of the party factions was in progress in a downtown hotel. Possibilities for the nomination for county judgeship were discussed, and a particular candidate was agreed upon and a representative was delegated to interview him. When the group learned that the prospective candidate was then attending another meeting on an upper floor of the same hotel, the two men went into conference immediately.

"I'll be glad to become your candidate," answered the candidate (who was then on the Municipal Bench), "but before I can give you my final answer, I must get the O.K. of my ward committeeman."

The committeeman, who was affiliated with another faction, gave his consent. Had he not been thus consulted the candidate would have jeopardized his prospects of renomination for the Municipal Bench. The wisdom of his precautionary foresight appears in the fact that he lost this election, but at the end of his term was re-elected to the Municipal Court.

TABLE LI
FIELDS OF PUBLIC SERVICE FROM WHICH CHICAGO JUDGES
HAVE BEEN RECRUITED

Period: 1906-32, Inclusive

Number of Individual Judges: Municipal Court, 114; Circuit and Superior courts, 76

Character of Position Previously Held	Candidates Originally Recruited from Fields Specified					
	Courts Combined		Municipal Court		Circuit and Sup'r Court	
	Num-ber	Per Cent	Num-ber	Per Cent	Num-ber	Per Cent
A. Private practice.....	49	26	35	31	14	18
B. Part of the judicial mechanism.....	53	28	23	20	30	39
Justice of the peace or police magistrate.....	8		7		1	
Municipal Court of Chicago, judge of.....	13				13	
Master in chancery.....	23		8		15	
Assistant to county judge.....	1		1			
Assistant to Probate judge.....	7		7			
Assistant to Juvenile Court judge.....	1				1	
C. Prosecuting offices.....	26	14	17	15	9	12
State's attorney.....	16		11		5	
Attorney general of Illinois.....	2		2			
United States District attorney.....	4		2		2	
City prosecutor, Chicago.....	4		2		2	
D. Legal departments.....	31	16	23	20	8	11
City of Chicago, corporation counsel.....	14		10		4	
City of Chicago, city attorney.....	1				1	
Sanitary district.....	6		6			
Board of Education, attorney for.....	2		1		1	
Sheriff, legal advisor to.....	2		2			
Village, attorney for.....	3		2		1	
Park Board, attorney for.....	1		1			
Inheritance Tax Office, attorney for.....	1				1	
State Board of Health, attorney for.....	1		1			
E. Appointive administrative office.....	6	3	3	3	3	4
Civil Service Commission, Cook County.....	4		1		3	
Civil Service Commission, Chicago.....	1		1			
Board of Education, truant officer.....	1		1			
F. Elective non-judicial offices.....	25	13	13	11	12	16
Congress.....	1				1	
General Assembly, Illinois.....	10		4		6	
County Board of Cook County.....	1		1			
Board of Assessors, Cook County.....	1				1	
State Board of Equalization.....	1		1			
Council, City of Chicago.....	11		7		4	
Total.....	190	100	114	100	76	100

If the political affiliations of the remaining one-fourth could be traced, they too would undoubtedly be shown to have been active party workers prior to their nomination.⁴

"Judges come up through the political route," the *Chicago Bar Record*, XVI, No. 3 (December, 1934), 83, quoted Judge Thomas Taylor, Jr., as saying upon retiring from the Circuit Court in 1933. "We have many able men at

The slate-makers shrewdly rate the vote-getting power of a judge whose service has won him a substantial personal popularity. Not to renominate such a judge might react against the whole ticket. But if an incumbent has offended the political powers, he may be dropped.

"Can he get by the Bar?" is another factor calculated by the slate-makers. Evidently the Association's indorsement is regarded as an asset to be capitalized when given. When it is withheld, the matter is either ignored, or even converted into political capital.

Several instances were related to the writer that in general bear out the foregoing description of the slate-making process. One leader broke into a hearty laugh when informed that the writer was attempting to make a scientific study of judicial selection. He said:

If you could tell what actually happened in some of these cases you would write a side-splitting comedy. Take Judge ———, for example. The only reason he is on the Bench today is that when he was first put on a ticket he represented the Poles. And do you know how Judge ——— (a Democrat) got on the Bench? As a young man he brought a libel suit on behalf of a West Side leader against a newspaper. Other lawyers were reluctant to take the case. His client told him that if he won, he'd put him on the Bench. The lawyer won the case. The leader photographed the check, framed the photograph, donated the check to the United Charities. Then he engineered the nomination of his protégé at the next judicial election, which happened to be for a vacancy in the Superior Court. The Republican tide was running strong, but much to everyone's surprise, his protégé won and has been on the Bench ever since.

The late Judge Jesse Holdom's sponsor was Victor F. Lawson, publisher of the *Chicago Daily News*. Theirs was a personal attachment, for Judge Holdom had been a clerk in the office of J. C. Knickerbocker, who drew up the original partnership agreement between Mr. Lawson and Melville E. Stone.

The story is told of the late George Brennan, shrewd leader of the Cook County Democracy, who asked an adviser to comment on a Municipal Court ticket on which Irish and foreign names predominated. When urged to "balance" and strengthen it by adding some good old-fashioned American names, he did so and added several well-known and well-qualified attorneys.

Any politically informed person can associate candidates and their sponsors and give the "low down on the hook-up" in each case. So general is the practice, in fact, that the press usually reports the

the bar. It is a pity they will not be able to get on the bench. . . . I could name 300 to 400 of the best lawyers, fit for the bench, but not one of them will ever have a ghost of a show. Our people will not select men who are the best for them. They are plastic in the hands of the politicians. Judges come up through the political route. The young lawyer becomes a precinct captain and a good organizer. In time he gets close to the ward committeeman. He then tries out for the Municipal Court. After a few years here the ambitious ones aspire to the Circuit and Superior bench. Their success is at no time dependent upon their ability as judges. We get good ones only by chance."

sponsors at the time the nominations are first discussed. Frequently the press correctly predicts, days or weeks in advance, who the nominees are to be.

A judge's record may win him wide acclaim and fame; nevertheless, he is solely dependent upon a ward committeeman-delegate for renomination. It is true, of course, that the judge's reputation will strengthen the committeeman in his campaign to renominate his protégé. A campaign by a newspaper, in the judge's behalf, may even force a committeeman's hand. The desirable publicity, however, is likely to come too late, for the pre-convention negotiations often receive no publicity, and the damage may be done before the press support is forthcoming.⁵

The sponsorship system places the incumbent seeking re-election under a peculiar obligation to the committeeman.⁶ A particularly vicious circumstance is the ease with which a judge, no matter how much he deserves re-election, may be insidiously knifed for official acts that displease the party organization.

The community agencies that customarily support the deserving members of the Bench—the press and the Bar—are likely to act too late. In exceptional instances a publicity barrage may be extremely helpful, but it would be difficult to systematize support for every worthy incumbent.

The unfortunate aspect of the practice is, of course, that the moment the political sponsors "drop" a deserving judge, his only recourse is, as has been shown, an exceedingly forlorn one—the expense and probable defeat of an independent candidacy.

Judges denied renomination.—The instances of judges' being "dropped" for failure "to go along" are surprisingly few, however, in proportion to the total number of renominations made under the same system. But the situation is distinctly one where the exceptions "prove the rule."

In the Circuit Court elections of 1921 and 1927 party leaders denied renomination to deserving judges who had refused to bend the knee to politics. Both instances were clear-cut cases of the system of political sponsorship and domination in judicial selection. The issue in 1921⁷ arose largely over the unwillingness of the judges to give pre-election pledges of accepting dictation from the then dominant Thompson-Lundin organization in appointments of receivers, masters-in-chancery, park commissioners, etc.—an open

⁵An excellent illustration of how press attacks can nip undesirable nominations, however, was the barrage let loose in opposition to the reported intention of a Republican faction to nominate a "Capone lawyer" for a Superior Court vacancy in September, 1932. The report of this candidacy "broke" September 10. The subsequent unfavorable blasts were undoubtedly a factor in another nomination being made three days later.

⁶See p. 294 for references as to how the relationship operates in the Criminal Court.

⁷See chap. X, p. 69 ff., for a description of the contest.

and deliberate attempt of politics to dominate the local judiciary.⁸

In 1927 three incumbents of the Circuit Bench were sacrificed for political expediency under a coalition agreement between the "regular" Republican and Democratic organizations.⁹ In their stead were elected two representatives of the Robert E. Crowe faction of the Republican party and a Cermak-faction Democrat.

The action was simply a political maneuver. Three incumbents, who for various reasons had become unacceptable to the party leaders, were dropped in favor of three party stalwarts of unquestioned loyalty to the organizations' dictates. Judge C. M. Thomson charged that his omission was due to his opposition as a member of the Circuit Court's committee-on-help to County Treasurer George F. Harding's demand for 135 more jobs in his office, and to an opinion he had written in the "Pageant of Progress" case declaring Harding, Mayor Thompson, and other city officials guilty of a breach of trust in failing to turn profits from the pageant into the city treasury.¹⁰ Another possibility is that in removing his residence from Chicago to a suburb Judge Thomson had severed his political tap-roots.

One report in the campaign explained Judge Torrison's plight as having been due to his ruling against the People's Gas Light & Coke Company, which had obtained an injunction allowing it to collect a gas rate in excess of that provided by a city ordinance. He thus incurred the wrath of Samuel Insull, the company's head, who was a large contributor to party campaign funds.¹¹ A later explanation was that he had become hopelessly unfit by some progressive failure of memory.

Judge Johnston's deafness was rumored as the reason for his omission.¹² Judge Johnston himself declared that he was sacrificed to make an additional "vacancy" (one already existed in the Superior Court) to be filled by Democrats and thus placate the rival claims of factional leaders A. J. Cermak and M. L. Igoe for the right to name the nominees.¹³ Four hours before the Democratic

⁸Three of the five Republican incumbents who "went along" with the city hall group were subsequently elected to the Superior Court; one ran again but was defeated; one (Jesse A. Baldwin) died shortly after, reputedly heart-broken over his defeat. The sponsorship system is shown in the latter case. When importuned to join the coalition slate the judge is reported to have said, "I can't go back on Billy now," "Billy" being William H. Weber, Republican leader in the "country towns," who was Judge Baldwin's sponsor.

⁹All of the remaining 17 incumbents, Republicans as well as Democrats, were renominated. For details of the campaign see chap. XI, p. 75 ff.

¹⁰*Chicago Tribune*, May 11, 1927.

¹¹Statement of Donald R. Richberg, *Chicago Daily News*, May 12, 1927.

¹²However, Judge William H. McSurely, for four years his associate on the Appellate Bench, declared that in daily conference with the judge "not one of the hundreds of cases because of any deficiency in hearing in Judge Johnston received any less than the full and complete consideration to which it was entitled" (*Chicago Daily News*, May 10, 1927).

¹³See reference to this in chap. XI.

convention met at the Hotel Sherman, Judge Johnston was notified to pay his campaign contribution of \$3,000, according to one report. When he was a little slow in complying,¹⁴ and with the Cermak-Igoe row going on meanwhile, it was decided to settle matters by giving Judge Johnston "the ax" and thus enable both Cermak and Igoe to name their men.¹⁵

More convincing of the political purpose in the substitution, however, was the subsequent conduct of the two Republican nominees during their term. Under a bipartisan "deal" they voted with the Democratic minority of nine members and thus "organized" the court for dispensing political patronage at the disposal of the Circuit judges.¹⁶

Campaign assessments.—For at least forty years both the Republican and Democratic organizations in Cook County have assessed judicial candidates for funds to help finance the judicial campaigns. In the nineties the assessments ranged from two thousand to five thousand dollars per candidate.¹⁷ In the case of Circuit judges, this amounted to from three to eight months' salary. In recent years the assessment has continued to run into several thousand dollars for each candidate, but due to the larger salaries now paid it has not often figured more than three or four months' salary for a six-year position.

For the Municipal Court campaign in 1906 each party was reported to have raised a campaign fund of approximately \$50,000. The Democratic candidates themselves were reported to have de-

¹⁴An authentic report from a confidential source states that in an earlier campaign, a judge had given the Democratic organization his personal note for the amount of his campaign contribution and then failed to redeem it. George Brennan, the Democratic leader, declared he would never again be caught "holding the bag" for any candidate, even a judge. Hence the demand for cash and the summary action when Judge Johnston was tardy with the payment.

¹⁵*Chicago Daily News*, May 10, 1927. Judge Otto Kerner, a protégé of Anton J. Cermak, took Judge Johnston's place and Judge D. J. Normoyle, sponsored by M. L. Igoe, was nominated for the Superior Court vacancy.

¹⁶For details of how the "deal" operated, see p. 296.

¹⁷*Chicago Legal News* (XXIII, 55) in 1890 said: "The idea of a man being nominated for judge and having to pay an assessment of from two to five thousand dollars for the privilege of running for judge . . . is one reason why so few good men want to run for judge. They do not like to submit to such extortion."

Two years later the same publication expressed the hope that "the party managers should commence a reform in reference to judicial elections and see that under no circumstances will they allow an assessment on a judicial candidate for electioneering purposes. It has been the practice to assess a candidate for judicial honors from three to five thousand dollars, and if he remonstrated, he was told in some cases that if he did not pay his assessment, his name would be left off the ticket. This practice should be stopped. It has not been confined to either of the two great parties. Both republicans and democrats have resorted to it to raise political revenue" (XXIV [August 6, 1892], 393).

cided upon the following assessments as equitable: chief justice (also chief clerk), \$1,000; associate judges—six-year term, \$700; four-year term, \$600; two-year term, \$400; and chief bailiff, \$800. The Republican assessment was said to have been considerably higher, for “as a rule Republican county and judicial assessments yield a higher percentage of cash to the candidate than the Democratic, owing largely to the fact that the Republican county candidates, and frequently Republican judicial candidates, stand a much better chance of obtaining a return in the way of salaries.”¹⁸

More recent evidence is that the assessments are now in the neighborhood of \$1,500 per candidate for the Municipal Bench and \$4,000 or \$4,500 for the Circuit and Superior courts. In 1923, for example, a judge of the Circuit Court admitted borrowing \$4,000 to pay his campaign assessment.¹⁹

In the Superior Court election of June, 1928, James J. Barbour, candidate on the Chicago Bar Association ticket, claimed that his opponents had contributed \$4,000 apiece to the coalition campaign fund, when, as a matter of fact, there was to be no campaign on which to spend the fund.²⁰ In the Superior Court election a year later the assessment was \$4,500.²¹

In the primary election of April, 1932, “a flat \$1,500” was said to have been levied against the candidates on the “Crowe-Harding-Emmerson-ex-city hall ‘harmony’ slate for judge of the Municipal Court.” Candidates for county offices were assessed a straight 5 per cent of their four-year salaries, in spite of “1932 looking like a Democratic year.”²²

To the party leaders, who are in the business of managing and winning elections, a place on the Bench seems to be just another job to be filled. Why shouldn't the men who get the jobs pay for the campaign which got those jobs? And why shouldn't the judges pay their share? Don't they get jobs too? And aren't theirs better paying jobs than most of the party lieutenants have hopes of landing? Besides, who “elects” the judges, anyway?

No one knows any better than the judges themselves, however, that it is the politicians who elect them today. The faithful and

¹⁸*Chicago Daily Tribune*, September 12, 1906.

¹⁹For details of the investigation of a judge's having solicited and accepted this amount as a “loan” from a man whom he had frequently named receiver, see *Report of Judiciary Committee, Chicago Bar Association Record*, June, 1923, pp. 3-6.

²⁰*Chicago Daily News*, May 26, 1928.

²¹*Ibid.*, October 29, 1929. When the county board in November, 1929, requested the judges to contribute 20 per cent of their salaries as an economy measure, Judge A. C. Barnes, who had been a coalition candidate in the recent election, is reported to have said: “After just passing through a campaign and paying \$4,500 for the privilege, I certainly don't feel like contributing twenty per cent of my salary” (*Chicago Tribune*, November 27, 1929).

²²*Ibid.*, January 29, 1932.

capable judge should be independent of the rise and fall of political régimes, and should be able to look forward to re-election as a matter of course. But he knows that in Chicago the party machines, not judicial records, control elections.

The campaign assessment is a fixed feature of Chicago's political practice. Although the assessment has been roundly condemned, no substitute plan has been proposed in Chicago.²³ As a matter of fact, until some plan is available to avoid competitive judicial elections, it is difficult to see how the campaign assessment can be avoided. The expense of a metropolitan campaign is terrific, and this factor has contributed in several ways to tighten the grip of the organizations on judicial nominations and elections.

Coalition states.—By simply agreeing to support only one slate of candidates the regular party organizations have obtained not only a foothold, but almost a stranglehold, on judicial selection in Chicago. Coalition or fusion, as this practice is termed, has been used many times under widely differing conditions for notably diverse reasons and with varying results.

Coalition has served several purposes. It has been employed to eliminate expensive contests when there has been only a single office to be filled. This has been the case particularly where the incumbent had served satisfactorily and was a candidate for re-election. Coalition for Chicago's representative in the Illinois Supreme Court is almost a tradition. Coalition has been used at times to make the local judicial elections nonpartisan in spirit, if not in letter, and again, under the guise of nonpartisanship, it has been invoked for venal spoils purposes. Coalition has "saved the skins" of many loyal and efficient judges when their party's fortunes were at ebb-tide. At the same time, it has been used to keep unworthy judges on the Bench. And not unnaturally, coalition has been denounced in principle by those who later gave fervent thanks (in private, at least) to it for saving worthy judges who would have been defeated in a partisan contest.

In the earlier instances, notably 1885 and 1897, the Bar petitioned the parties to renominate incumbent judges. This action was taken in the interest of a qualified Bench rather than as an attempt to control the judiciary for partisan purposes.

After 1897, coalition as applied to the large groups of candidates fell into disuse until the Superior Court election of 1917, when Republicans and Democrats joined to present a united front against the Socialists.²⁴ Then, in the Circuit Court election of 1921, a coalition of Democrats and anti-City Hall Republicans, with the

²³The Cleveland Bar Association, for example, undertakes to conduct and finance campaigns for the judicial candidates whom it endorses. The candidates pledge themselves not to solicit funds.

²⁴The object of the fusion ticket of 1917 was explained to the membership of the Chicago Bar Association in an announcement that the usual Bar primary would not be held that year, as follows: "Your Board of Managers, act-

co-operation of the Chicago Bar Association, was effected to checkmate the designs of the Thompson-Lundin machine upon the Circuit Bench. In the Superior Court elections of 1922-23, however, each party placed full tickets in the field. But in the Circuit Court election of 1927 and in the Superior Court election a year later the practice was renewed and continued. In both contests the Democrats fused with various Republican factions. But in the coalition Superior Court ticket of 1929 the alignments had shifted somewhat. The Deneen Republicans (to the exclusion of the Thompson and Brundage factions) successfully joined the Democrats to re-elect the incumbent Superior Court judges.²⁵

Coalition was continued in the Circuit Court election of 1933, and in the Superior Court contests of 1934 and 1935. In 1933 coalition was a fact in spite of the appearance of the "after-thought" regular Republican slate. In the June, 1934, election, owing to the dominant position of the Democratic organization, coalition was taken so much for granted that no independent candidates contested the offices. In this election the Municipal Court (two vacancies in which were being filled) was included in the agreement for the first time.²⁶ Coalition, it will be noticed, thus far had been applied only to the courts for which nominations were made by party conventions.

The June 4, 1934, election provided a perfect example of the coalition principles, as combined with party-organization, stranglehold control, and carried to its logical conclusion. A coalition agreement to renominate the six incumbents—five Democrats and one Republican—for the regular Superior Court terms, was easily effected in the party conventions. The same was true of the two vacancies. For one vacancy was named a Republican, a former incumbent of the Circuit Bench, who had been denied renomination

ing without haste and after full consideration, . . . believes that this Association should not place before its members at a bar primary the names of any men who seek places on the bench with the avowed purpose of embarrassing the Federal government in the conduct of the war and of nullifying the law of this state. The two leading political parties, mindful of the common absorption in the all-important question of war, and fearful that the electorate might neglect the polls at this coming election to the possible detriment of the administration of justice in this community, placed in nomination a fusion ticket which includes all of the sitting judges but one, and divides the remaining vacancies equally between the two parties" ("Report of the Board of Managers of the Chicago Bar Association, October 31, 1917," *Reports for 1918*, pp. 21-24).

²⁵At this time the Crowe-Barrett Republicans were in partial eclipse, owing to Mr. Crowe's defeat for the state's attorneyship in 1928, and to the disruption of their forces as a result of the grand jury investigations of election frauds and violence in the "pineapple primary" of 1928.

²⁶The argument urged by the political leaders, and tacitly indorsed by the press, was that with the element of contest thereby eliminated, the voting districts could be enlarged and an estimated \$150,000 saved in election expense (*Chicago Tribune*, April 13 and 19, and May 15, 1934).

for the Circuit Bench a year earlier; and for the other vacancy was named a Democrat (Frank J. Corr), a member of the City Council, who in 1933 had been elected mayor pro tempore during the interval between Mayor Cermak's death and E. J. Kelly's appointment to the post. But Candidate Corr died on the eve of the election.²⁷

The Democratic organization then dramatically demonstrated its strength. With less than ten hours remaining before the polls were to open, the orders went out to "write in" the name of Cornelius Harrington, who had been the attorney and legal adviser for the party's county central committee.²⁸ He received more than 53,000 "write-in" votes!

The Democrats had two other matters to clear up to guarantee an uncontested election. A referendum to extend the aldermanic term from two to four years, originally scheduled for June 4, was shifted to the November election by council action. Then there remained the extremely troublesome matter of effecting coalition in the two Municipal Court vacancies. Each party had nominated candidates for these two vacancies. But after prolonged dickering, a compromise was effected. For the six-months' vacancy, a Republican nominee, George B. Holmes, who was highly indorsed by the Bar Association, was selected. For the two-year term vacancy, a Democratic nominee, Erwin J. Hasten, was selected. In this action the Democratic organization disregarded everything but political expediency. For, less than six months before, Candidate Hasten had been unseated from the Municipal Bench in a vote fraud contest (*Heller vs. Hasten*²⁹) and in the Bar primary had polled only 330 votes to his Republican opponent's 1,482.³⁰

All of these coalition agreements and compromises were made after the filing date for third-party candidates had expired. The coalition slate thus had no opposition whatsoever. Under a statute permitting consolidation of voting districts in uncontested elections, the number of polling places was reduced from 3,152 to 636 in Chicago and from 512 to 80 in the "country towns." In consequence, the customary expense was reduced by an estimated \$175,000. The participation of voters was also reduced. Approximately 115,000, or only 7 per cent of the registered electors, went to the polls

²⁷*Chicago Daily News*, June 4, 1934.

²⁸*Chicago Tribune*, June 5, 1934. Candidate Harrington's "political connections" may be judged by the following circumstances: he was a master-in-chancery, a political job. The senior partner of his law firm was nephew of the titular leader of the local Democracy; this same partner was appointed county treasurer to fill out the term upon the death of the incumbent; the partner was also a Democratic ward committeeman. In addition, the firm contained two aldermen who were also committeemen of their respective wards. See the *Chicago American*, June 6, 1934.

²⁹See p. 266-68 for details of this contest.

³⁰*Chicago Tribune*, May 11, 1934.

throughout the county.³¹ This handful of voters merely ratified the appointments of the party organizations. As the *Daily News* remarked:

Hidden beneath a legal elective system, we have a non-legal appointive system of the most vicious kind. The balloting merely screens the operations of the party machines. Yesterday the screen was scant enough for all to see under it. The wise thing would be to take it completely down and establish legally an appointive system that would be non-political and openly responsible.³²

In the light of this tendency toward coalition, it is enlightening to survey the attitude of leaders of the Bar, the press, and the political factionists.

In announcing the plan of the Bar Association in 1928 to place an independent ticket in the field, Herbert M. Lautmann, secretary of the Bar Association, stated the purpose to be "to give the voters an opportunity to choose their own judges instead of permitting the political bosses to appoint them."³³ Three weeks later an official statement of the Association declared coalition to be a "usurpation of the rights of the people."³⁴ A year later, however, Roger Sherman, chairman of the Association's Committee on Candidates, stated that the Bar's attitude on coalition would depend entirely on the candidates named. "Other things being equal," Mr. Sherman is reported to have said, "I believe coalition would be favored by a large majority of our members."³⁵

"Coalition cuts both ways," declared the *Tribune* editorially. "It can be a device to deprive the voters of a choice of candidates and to impose upon them undesirable men, or at least to weaken the chances of an independent ticket."³⁶

After the overnight selection of a "write-in" candidate in the June 4, 1934, election, the *Chicago American* remarked editorially:

Elections by coalition are bad in principle, because they deprive the voters of a choice of candidates. They are bad in practice because they permit party bosses, and not the people, to decide, definitely and finally, who shall have the offices that are to be filled. . . . The coalition idea, like many others that have worked out badly, was born of good intentions. . . . Unfortunately . . . it has tended to put the judiciary more and more in politics. . . .

During the Superior Court campaign of 1929, Circuit Judge Harry M. Fisher summarized the case for coalition as follows:

By no process of reasoning can I conjure up justification for a system which requires a capable sitting judge, when running for re-election, to contend with an opponent who, though he be admittedly unqualified, is sure to start with 100,000, 200,000, or 300,000 votes in his favor simply because his name appears under a party label to which the judge does not belong. Why should a trained, experienced, capable judge, whose record has been approved several times by the public—at a time when to resume private practice would be a

³¹*Ibid.*, June 5, 1934.

³²June 5, 1934.

³³*Chicago Tribune*, May 4, 1928.

³⁴*Chicago Daily News*, May 24, 1928.

³⁵*Ibid.*, July 30, 1929.

³⁶August 3, 1929.

hardship upon him and his retirement from the bench would be a loss to the community—be subjected to the political accidents to which he in no way contributed?

Some system, retaining in the people the right to choose their judges, but freed from the absurdities of the present mode of election, should ultimately be adopted; but until that is done a carefully guarded plan of coalition by the major parties could serve as an excellent substitute.³⁷

What can we conclude concerning the advantages and disadvantages of coalition? From the standpoint of the Bar Association, coalition is a blessing or a curse, depending upon the situation at the moment. To the judge seeking re-election, coalition is obviously a political life-saver—except when it squeezes a political weakling off the compromise ticket.

To the political organizations, coalition is both a convenience and a handy means to an end. When enough votes are in sight to win, as in coalition contests, the organizations need merely to go through the motions of a "campaign." Since there are plenty of hard fights ahead, why put unnecessary energy and money into an election already "in the bag"?

But the coalition principle has been made to serve as a means of patronage distribution in Chicago. A working agreement over patronage available through the courts has been in effect for many years. The "political comity" of the two major parties cited by the Bar primary code of 1891 indicates that at that early date there was an "understanding" over the distribution of the judicial offices.

Since 1917 coalition has become increasingly important in controlling the distribution of patronage, not only appointive positions in the judicial mechanism itself, but also positions subject to judicial sanction—the county fee offices and, prior to 1934, in the South Park System—and finally, through reciprocal pledges of support between party organizations, in "organizing" administrative units, such as the Sanitary District, for patronage purposes.

Usually these maneuvers are veiled. Campaign arguments thus become but a screen for political manipulation. Coalition as thus motivated directly affects judicial selection. The party organizations are the appointing authority in fact. The party leaders can insist either on dictating the action of the judges in so far as they affect patronage, or they will nominate enough pliable candidates to carry out their schemes.

Election administration.—The party organizations complete their control of the selective process by virtually taking command of the election machinery and by manning it at every point with their own workers. Chicago has a special system³⁸ which was designed by the civic forces in the 1880's to stop rampant election abuses.

³⁷*Chicago Daily News*, October 17, 1929.

³⁸See the City Election Act of 1885 as subsequently amended.

The system is based upon the two-party principle and is required to be administered by persons known to be active workers in the two leading political parties. The designers believed that the two groups of partisans would automatically check each other and thus keep elections free from fraud. But a comity in patronage has enabled the party leaders to pervert this principle and by the force of custom to become those really responsible for the operation of the system. A brief explanation will show how this has come about.

The city election act places the judge of the County Court in charge of election matters.³⁹ He appoints an administrative board of three members, but directly supervises the work of the board at many points. This board in turn appoints a board of five members in each precinct polling place. In 1935 there were 3,275 precincts under the board's supervision. Both the three election commissioners and the 16,375 precinct officers are commissioned by and become officers of the County Court. They are thus subject to its orders.

In the appointment of the election board, "two of such commissioners at least shall be selected from the two leading political parties of the State, one from each of such parties . . . and be men of well-known political convictions and of approved integrity and capacity."⁴⁰ The act lays particular stress upon the representative character of these commissioners, for it also provides that whenever it shall come to the knowledge of such judge of the County Court that one of the leading political parties of the State is not represented upon such commission by a person of the same political faith, he shall at once remove one of such commissioners and fill the vacancy with a member of the leading political party not so represented.

The judge's power of removal is final.⁴¹

Furthermore, in the appointment of the polling-place officers, at least one judge shall be selected from one of the two leading political parties or organizations of the State to serve in each precinct, and one clerk of election shall be selected from each of the two leading political parties of the State to serve in each precinct.⁴²

The positions are divided between the leading parties as follows:

The leading political party represented by minority of all commissioners in said board shall be entitled to one of the judges and one of the clerks in each

³⁹This is a special duty imposed upon the county judge of such counties as contain cities which adopt the act. In Cook County it is estimated to occupy 50 per cent of the county judges' time, and is in addition to a long list of various duties assigned to county courts.

⁴⁰City Election Act, Art. II, sec. 2.

⁴¹The provision vesting the appointment of administrative officers in a judge was upheld in the case of *People v. Hoffman*, 56 Amer. Rep. 793. The same decision confirmed the validity of the provision requiring a political test for office in the case of at least two of the three election commissioners and for the judges and clerks of election.

In re removal power see Proceedings for the County Court (June 21, 1930 ff.) *People v. Fred V. Maguire*; also review of this case by Professor K. C. Sears (1933), MS, University of Chicago Law School.

⁴²*Op. cit.*, Art. II, sec. 11.

precinct with an even number and to two of the judges and one of the clerks in each precinct with an odd number.

In the case of the other leading political party, the provision is reversed.⁴³ If a third political party is represented on the board, "each of such parties shall have one representative, as judge in each precinct, as far as practicable."

In practice, these provisions have worked out as follows: not more than two political groups have ever qualified as "leading political parties"—with the result that the Democrats and Republicans have divided membership on the board. Since the political qualification of the third commissioner is discretionary with the court, the judge has usually appointed a member of his own party to this office, thus giving his group a working majority on the board.

Under a plan in operation since 1895, the election commissioners receive recommendations for the thousands of precinct posts from the recognized leaders of the two leading parties in each ward. As the County Court declared in the case of the *People vs. Maguire*, surely no one should be in a better position than the duly elected ward committeeman to vouch for the political affiliations and "party zeal" of judges and clerks of election. . . . There is nothing inherently wrong in considering the recommendations of duly elected ward committeemen in the appointment of judges and clerks and the election laws clearly contemplate that such partisan recommendations should be considered.⁴⁴

This statement explains how the party machinery has become meshed with the election machinery. The county judge's arbitrary authority over appointments has made that person the key officer in election administration. Hence, the local maxim: whoever controls the county judge, controls the elections.

A threefold official liaison is established between the party organizations and the election administration: (1) control of the county judge, (2) control of the election commissioners, and (3) control of the 16,375 precinct polling-place officers.

A fourth liaison is added by the presence of party representatives in and around the polling-place on election day. A "checker" for each party or faction is in the polling-place to make note of the voters as their names are called. Nearby the captain and his workers buttonhole voters and pass out campaign literature. Dur-

⁴³*Ibid.*, sec. 12.

⁴⁴*Op. cit.* Opinion of Hon. E. K. Jarecki, p. 9. A case in point is the experience of the writer, who served for two years as a judge of elections. The appointment was made on recommendation of a precinct captain who held a political position in the recorder's office, a fee office. This captain's wife was a clerk of election in another precinct. On the same board was the Democratic captain of the precinct, who was also a day laborer for the South Park System. Two women members of the board had husbands with political positions—one in the playground bureau of the public schools and the other in the Sanitary District. The Republican precinct captain reported to and got his instructions from a judge of the Circuit Court who resided in the ward.

ing the counting of the ballots the party representatives are on hand in full force either as watchers or as actual helpers in the counting.

The local registration system is one of the least effective in the country in the prevention of padded poll lists, repeaters, and other forms of illegal voting due to inadequate identification.⁴⁵ The system is so highly decentralized that there is only nominal supervisory control of the local boards' actions. Beyond a mere checking of the tally sheet, the results of a canvass certified by a local board are seldom reviewed by the central office except in case of a contest. Seldom is the vote thus challenged, however, for a contest must proceed first through the tortuous course of litigation. If finally ordered, a recount consumes months of time, in the case of a city-wide office, and is prohibitively expensive to both litigant and city.

The only checks against fraud provided in the law are the rivalry between the parties, the integrity and intelligence of the precinct officials, the fear of the numerous penalties in the election act,⁴⁶ and the rectitude of the county judge. As deputies of the County Court, the polling-place officers may be summarily held in contempt of that Court for violation of election laws or regulations.⁴⁷ The County Court has thus summarily punished numerous officials. It should not escape notice, however, that this provision is discretionary with the county judge and is dependent upon that officer's personal sense of public responsibility.

⁴⁵J. P. Harris, *Registration of Voters* (Baltimore: Johns Hopkins Press, 1929), pp. 350-62. The unsuccessful effort in 1935 to obtain the adoption of "permanent registration" for Chicago brought the official opposition of the Democratic party to this safeguard against fraudulent voting dramatically into the open. As one legislator expressed it, "I was told to step on it [the permanent registration bill] or step out of the party!"

⁴⁶The prolonged litigation over the *Heller-Hasten contest* (see pp. 266-68) greatly aroused public resentment against election frauds. As a result, several cases were prosecuted "to the limit" upon the insistence and with the assistance of public-spirited citizens and organizations. Two groups of cases, with the backing of the Union League Club, were carried through the various stages of indictment by the grand jury, trial, and final convictions on charges of conspiracy to violate the election laws. (For details see *Chicago Daily News*, April 26, 1935, p. 1: "Four sentenced to jail for part in vote fraud"). A similar case revealed the ramifications of the political machine. One of those indicted (a Republican precinct captain) was the brother of a Republican legislator who had voted with the Democrats to "kill" a permanent registration bill. The defendant was a West Park "payroller," but could not be found to be served a subpoena until the heads of the park district ordered him to report to the court. The Democratic precinct captain, indicted in the same case, had been before the courts several times on vote fraud matters (*Chicago Daily News*, April 23, 1935). He was a deputy bailiff in the Municipal Court. The sheriff's office failed for many weeks to serve the warrant for the reason that they regarded it as a discourtesy to a co-ordinate department. When pressed to do its duty, the defendant was notified by telephone to appear. Instead of appearing, he skipped.

⁴⁷Normally the state's attorney is the officer to institute election prosecutions. From 1920 to 1928, however, the practice fell into disuse, leading to the invoking of the court's contempt power. Since 1932 major cases have been prosecuted by the state's attorney through the regular criminal channels.

The county judge is thus constantly "on the spot" politically. His official term is only four years, and as a party member he must keep one eye on the next election. An aggressive county judge will immediately be put on the defensive with his own party if he punishes a henchman for an act that may easily be interpreted as misguided zeal for the cause. Political influence immediately intervenes to protect all such.⁴⁸ It would be only human for the county judge to heed the requests of those to whom he owes his official existence.

Ballot frauds.—Widespread fraud, made possible by Chicago's antiquated and politically operated election system, is one means whereby the party organizations perpetrate and perpetuate their control. One well-informed writer has stated:

Chicago is constantly menaced by the prospect of crooked elections. It always has been. It probably always will be, unless something is done about it.

Competent observers, official and unofficial, estimate that there are about 200,000 fraudulent votes on the registration lists at all times. These same observers know there are about fifteen "bad" wards, where election frauds are likely to occur at any time there is enough motive to inspire them. They also know that there are between 600 and 700 machine controlled precincts where crooked registration, voting and counting must be watched at every election. . . .

It is an axiom among veteran politicians that by hook or crook, there are "always 200,000 votes in the box against any candidate who is not wanted" by those who have a political or selfish interest in the result, even before a vote is cast. Actually, of course, the votes are not there, but they can be voted, and are voted if the political crooks want them.⁴⁹

How this crooked system operates was disclosed in the election case of *Heller vs. Hasten* in the County Court. Municipal Judge Samuel Heller, Republican incumbent for re-election in the November, 1932, election to the Municipal Court, was shown on the official tally to have been defeated by 262 votes in a total of 1,250,000 ballots cast. On election night he had been shown to be elected by some 1,800 votes and was so informed by County Judge E. K. Jarecki, who complimented him on having thus withstood the Democratic landslide. Heller thereupon filed a suit in the County Court contesting the election with Erwin Hasten, Democratic nominee, who was the twelfth or last successful candidate in the returns.

The Heller contest was first filed December 3, 1932. By legal jockeying, the Democratic opposition (which took up the cudgels for Hasten) succeeded in delaying the start of the recount until

⁴⁸Attorneys hired by the central committees of the party organizations appear as defense counsel at every proceeding involving a member of the party.

⁴⁹Leroy T. Vernon in the *Chicago Daily News*, October 4, 1933. See also his articles in issues of October 5, 6, 9, 10, and 11, 1933. Illustrating the process of "finding" votes, Mr. Vernon cited the report of the primary of 1920 when 17,000 votes were alleged to have been "picked up" between 10 o'clock on election night and the next morning—after all ballots were in the box and the polls closed. When 10,000 more were still "needed," they were "found" allegedly through manipulation of the tally sheets.

July 12, 1933. Twenty-five continuances, changes of venue and other delays were granted.⁵⁰ When the ballot boxes were opened, Heller was required to pay the costs of the recount. For several weeks the recount was handled by four "tables" which were able to check only one precinct a day. Had that pace been continued, several years would have been required to complete the task. The contest attracted widespread interest. There was the obvious possibility that so narrow a margin of defeat was probably inaccurate. The tactics adopted by the opposition to delay the case aroused civic-minded citizens who took up the contest as a crusade. They contributed funds; they obtained the permission of the court, hitherto denied, to supply their own workers, rather than to rely solely upon employees of the Board of Election Commissioners. The publicity which their interest brought to the case, plus the revelation of numerous inaccuracies, any one of which would have changed the verdict, created a pressure so great that the Hasten forces finally yielded. After 432 ballot boxes had been counted, the attorneys for the Democratic party, representing Hasten, suggested that on the basis of the recount, they would concede Heller's re-election and agreed for Hasten to resign. That was done, and on December 1, 1933, Heller was declared elected.

Twenty-nine per cent of the ballot boxes opened and counted were found to show evidences of definite or intended fraud.⁵¹ A few instances from the "banner fraud ward," the Twenty-fourth,⁵² will illustrate the arbitrary manner in which the tallies were manipulated:

5th precinct—The judges and clerks gave Heller twenty-eight votes. On the recount he got seventy-seven votes.

9th precinct—Heller lost fourteen votes, Hasten seventy-three. One hundred and eighty votes were apparently voted "straight democratic" by the marks of one person, with crosses also for Shulman or Shulman and Sbarbaro. Shulman lost 184 votes and Sbarbaro lost over 100 votes, indicating that some kind of fraud was perpetrated here which the election officials should have known about.

16th precinct—Out of 682 votes cast, 309 voters were given "assistance" by the election officials, only forty-three affidavits being used, and the rest given a verbal "oath." Joe Block, a judge, marked most of these ballots, no notation being made on the poll books to show to whom "assistance" was given. The remaining 373 ballots in the precinct were half-republican or split ballots, while those "assisted" were all democratic. Ruth Lessman, now Mrs. Rubin,

⁵⁰See "The Strange Case of Judge E. K. Jarecki," a pamphlet reviewing the Heller-Hasten contest, issued by the Better Government Association, June 21, 1933.

⁵¹See *Chicago Daily News*, January 2, 1934, for detailed recital of frauds discovered and location of the precincts involved.

⁵²Moe Rosenberg was Democratic committeeman for this ward. In the November, 1932, election, the Twenty-fourth ward gave the Democratic candidates an average of 85.92 per cent of all votes cast. The *Public Service Leader*, "the official publication of the regular Democratic organizations in Illinois" (issue of December 5, 1932), hailed the Rosenberg organization as the "champ Democratic Chicago ward."

testified that when she objected to having her ballot marked "straight Democratic" she was told her mother would not be paid for her vote.

20th precinct—Heller gained eighteen votes, Hasten lost seventy-four votes.
30th precinct—Heller gained thirty-one votes, Hasten lost four.

41st precinct—Heller gained 149, Hasten lost 182. Mrs. Angela Devere, "gold star" mother, testified that Joe Brownstein, precinct captain, told the judges and clerks the vote to be reported for each candidate. In an endeavor to frustrate the recount, the judges and clerks refused to identify their ballot boxes. When opened the boxes were found to contain the ballots of the precinct.⁵³

That fraud is committed also in "high-class" residential sections was shown by the fact that in the precinct housing the Chicago Beach Hotel (Fourth ward, 29th precinct) all of the Democratic candidates, excepting the five indorsed by the Bar Association, lost in excess of 100 votes each. In the 30th precinct of the same ward, votes had been arbitrarily added for ten Democrats and three Republicans and deducted from nine Republicans and three Democrats. In the 3rd precinct, Fifth ward (the heart of Hyde Park), the seven Republican candidates indorsed by the Bar Association gained by the recount from 73 to 115 votes. The candidates in both parties who had been indorsed by the Bar Association received a large vote from the voters, but these votes were shown by the recount to have been disregarded and fraudulently assigned arbitrary totals. An amusing instance of fraud was found in the case of a high-grade residential precinct in which 130 voters were shown to have filed affidavits of illiteracy. One of Judge Heller's citizen proponents resided therein! That number of "floaters" had been "voted" in the names of stay-at-home independents!

In the general election of November 2, 1926, more than four hundred members of the Bar Association responded to its request for volunteers to assist the Board of Election Commissioners in preventing fraud at the approaching election. The Board had officially requested the co-operation of volunteers "to act as watchers and challengers in the different wards such as the Twentieth, Twenty-fourth, and Twenty-seventh, for the purpose of preventing fraud where possible, and at the same time properly collect evidence of intimidation of voters and interference with judges in the proper performance of their duty."⁵⁴

⁵³*Chicago Daily News*, October 5, 1933. See also *City Club Bulletin* (Chicago), April 16, 1934.

⁵⁴Letter from the Board of Election Commissioners to the Chicago Bar Association dated October 27, 1926. It read in part as follows: "As a result of testimony heard before this Board and the County Court of Cook County, as well as the recount of ballots cast at the Primary Election of April 13, 1926, it has been well established that at this Primary wholesale frauds were perpetrated, judges and clerks of election were intimidated and in many wards of Chicago gunmen and crooks by their acts of terrorism and gun-play absolutely thwarted the will of the voters in their attempt to exercise the right of suffrage. The Board . . . is of the opinion that there will be repetition of the same offenses . . . unless unusual precautions are taken to prevent them. . . ."

The lawyers were commissioned "assistant attorneys" and were assigned to precincts in wards Twenty, Twenty-seven, Forty-two, and Forty-three. The watchers were instructed to appear at the opening of the polls and not to leave without securing relief. They co-operated with a special committee on elections which functioned in the Association's headquarters from 5:45 A.M. until midnight on election day. Two hundred of the volunteers made written reports of their experiences to the Association. One worker said: if in the future, I shall be drafted for this kind of service, would the Association be kind enough to supply me with a sawed off shotgun, such as seemed to click all about me at that most adorable "Goose Island" precinct, ———, the territory of ———, the Capone preserves?

Another related how at 2 A.M. several armed men came to a polling place entrance and called the Bar Association's watcher into the street. They demanded that a candidate for the Municipal Court, who had not been recommended by the Association, be given 300 votes. When he refused to agree he was assaulted and threatened with guns.

In a West Side district noted for its "hard-boiled" politicians, another watcher was repeatedly threatened throughout the day and ordered by local bullies to leave.

In another precinct the watcher was told that instructions had been given to see that he left the polling place. Someone tried to bribe him to leave, and later he discovered two five-dollar bills in his coat pocket.

A woman volunteer reported:

Politicians came in several times during the day with a crowd of men. The glad hand was passed and everything was peaceful until word got to them that the Bar Association representatives were present, at which time a few disgruntled looks were cast in our direction. . . . Judge ——— [a sitting judge of the Municipal Court who was not a candidate but was active politically] came in with a henchman, passed cigars all around and offered me a box of candy, which I refused. Judge ——— handed a political watcher a roll of bills on top of which was a five dollar bill. . . .

A Republican precinct captain, somewhat intoxicated, came in during the counting at another place and said to a party watcher: "Harry, you know what you are supposed to do." Harry said he couldn't because watchers from the Bar Association were there. The captain said he wanted ——— (Republican candidate for county judge) "given the breaks." When the counting proceeded without heeding him, Harry finally said, "You can't turn over another ballot until this matter of ——— is settled." In this same place the poll books were entirely blank and had not been used at all. The precinct officers claimed that they had never heard of poll books being used in an election.

In another place, the ballots for Municipal judges were not counted. The tallies were put down in the books from a prepared list of figures. "There were various arguments during the evening

as to details, but finally everybody agreed," reported the Association's representative.

Other practices recited were: precinct election officials brow-beaten and intimidated, sometimes by the displaying of firearms; open solicitation of votes in and near polling place; and the open passing of money from precinct politicians to voters. Six watchers from separate precincts in the Twentieth ward reported that a powerful politician came into the polling place while the balloting was going on and dumped currency on the table before the judges and clerks, saying it was to be used by them to treat themselves. The implication is that he did this in every polling place in the ward. The reports indicated further, that because of the physical task of counting the large ballot, the judicial and proposition ballots got little attention and were either fraudulently estimated or counted illegally by outsiders.

"Very grave doubt exists as to whether or not the vote as certified by some of the judges and clerks is accurately and honestly reported," concluded the Association's Committee in recommending that a recount be sought in certain districts.

As a result of the watchers' work in wards Twenty, Twenty-seven, and Forty-two, "there were only a minimum number of violations of the election law as compared with previous primaries and elections," declared the chairman of the Board of Election Commissioners in a letter dated November 5, 1926, in thanking the Association and its representatives for "the wonderful co-operation given us" and for the "real tangible results obtained."

A long record could be prepared of fraud and violence in other elections.⁵⁵ The murder of Octavius Granady, Negro, in the "pine-apple primary" of 1928, when he dared to run for committeeman against a reigning Republican in the Twentieth ward, might be cited; also a long list of kidnappings and beatings of workers and watchers in that contest and of the seemingly futile efforts to bring the perpetrators to justice. An interesting record could be cited of how fraud and violence were minimized in the November, 1928, election by the simple expedient of having Al Capone call off his gangsters and by having the police "jug" members of other known gangs and hold them "on suspicion" for the twenty-four hours that the polls were open and the ballots were being counted.⁵⁶

The link between election frauds and political racketeering is sufficiently close to raise the pertinent question of the malign effect of this conspiracy not only on the influence of the Bar, but also upon the entire process of judicial selection and the administration of justice.

⁵⁵For example, see report of Max Murdock to the Union League Club in *Men and Events, the Bulletin of the Union League Club*, XIII (April, 1936) 3, on vote fraud prosecutions growing out of elections in 1934.

⁵⁶Statement of Frank J. Loesch in the writer's hearing.

THE RÔLE OF THIRD PARTIES AND INDEPENDENT
CANDIDACIES IN JUDICIAL SELECTION

For convincing proof of the dominant position which the two major parties occupy in judicial selection in Cook County, we need only to examine the record of third-party and independent candidacies. This inquiry is especially pertinent, for twice the Bar Association has lent its support to such movements.

To find a *successful* independent ticket in the judicial history of Cook County, it is necessary to go back to 1887.⁵⁷

Notable instances of third-party and independent movements are found in the elections of 1897, 1906, 1912, 1917, 1927, 1928, and 1929. In the Circuit Court election of 1897, there were seven independent tickets in addition to a coalition slate and a straight-party ticket.⁵⁸ In a total of approximately 135,000 votes, the aggregate number cast for all the candidates of minor parties was less than 10,000.

In the election for the Municipal Court in 1906, a "nonpartisan" ticket with Democratic leanings surprised the regular party leaders with the high caliber of its nominees. Its nominees completely overshadowed the regular Democratic candidates in the Bar Association primary, but could not produce half enough election votes to seat one man out of twenty-eight.⁵⁹

In 1912, a Progressive ticket of but five members for nine Municipal Court offices polled an average of 80,429 votes, as compared with 123,000 for the Democrats, 113,700 for the Republicans, and 52,700 for the Socialists. A Socialist ticket for the Superior Court in 1917 polled more than half as many votes as the two major parties in coalition.⁶⁰

The tickets supported or sponsored by the Bar Association itself in 1927 and 1928 were both overwhelmed by a vote of approximately two to one. And the Brundage "people's" anti-coalition candidates for the Superior Court in 1929 were beaten by majorities ranging from two to one, to five to one.

The effect of this unbroken party dominance upon the influence of the Bar Association is obviously that so long as the system continues unchanged the Association must either work through the parties or compete with them. And neither course would seem to enable the Association to accomplish fully its objective of "taking the judiciary out of politics."

⁵⁷*Chicago Tribune*, June 8, 1887, p. 6. See also *Chicago Legal News*, XIX (June 4, 1887), 311-12, and chap. VIII, p. 50 ff., this study.

⁵⁸*Chicago Legal News*, XXIX (May 22, 1897), 323.

⁵⁹Election of November 6, 1906. See also *Chicago Record-Herald*, October 13, 14, and 20, 1906, and *Chicago Tribune*, October 20, 1906.

⁶⁰The nearest the Socialist party ever came to winning a city or county-wide office was in 1916, when the Socialist candidate for state's attorney of Cook County polled 102,579 votes against the winner's 236,384.

HOW POLITICS AFFECTS THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

The control which party organizations exercise over the election of the judiciary tends to impair the independence and the impartiality of the courts in the following ways: (1) it drags the Bench into politics; (2) it interferes with the judiciary in the exercise of the appointing power intrusted to it by law; (3) it hampers the administration of civil justice; and (4) it clogs the wheels of criminal justice.

Campaigns for office.—It will be recalled that in acknowledging the Bar's aid in the election of 1885, Judge John G. Rogers expressed gratification that in this election the judges were to be "presented to the people as lawyers and judges, and not as politicians."⁶¹ While it cannot be said that the early judicial elections were free from partisan rancor, it does seem that the element of horse-play and the perversion of office for political purposes were greatly minimized. The party leaders appear also to have been willing to nominate men who were qualified for office, to join in the renomination of distinguished judges, and to elevate the general character of the campaigns above that for purely political offices. But as the electorate has increased in size, and as the number of judicial offices has been enlarged, there appears to have been a growing willingness on the part of the judicial candidates to enter the political arena on their own behalf and to take an active part in the work of political organizations.

The participation of judges in campaign speech-making has been largely a matter of individual caution, and has often been omitted until a close campaign, such as in 1921, demanded it.

When the sitting judges personally took part in the Superior Court campaign of 1929, the press headlined the fact that they were campaigning for the first time in eight years.⁶² The seventeen judges toured the city that fall and told jokes from the same platforms from which other speakers rained political incriminations.⁶³ Some of the judges seemed to enjoy the opportunity of getting around and of renewing old acquaintances; but others found the experience of being among the campaign spellbinders, but not such themselves, a bit embarrassing—like "neighbor children playing while neighbor parents were fighting," according to one reporter.⁶⁴ Another found the judges "pathetically pleased" to get in even a word about themselves. One writer remarked that "of all the propaganda sent forth from headquarters of the three rival sets of candidates on the Democratic, Republican and People's tickets today, not a line is devoted to a discussion of the fitness of any of

⁶¹*Chicago Legal News*, XVII (May 16, 1885), 302.

⁶²*Chicago Herald and Examiner*, October 18, 1929.

⁶³*Ibid.*, *Chicago Tribune*, October 23, 1929.

⁶⁴*Chicago Herald and Examiner*, October 18, 1929.

the candidates.”⁶⁵ Another cited “the indignities of the character of campaigning which is demanded by political leaders” as one of the reasons why good men hesitate to offer themselves for judicial office.

The tradition of judicial dignity, however, is perhaps just as badly battered when the judges do find themselves directly in the line of fire. For example, the coalition ticket of 1929 was charged with being but the “echo” of a bipartisan political deal whose chief issue was the control of the Sanitary District pay-roll and other expenditures; that the judges were “mere chattels in the hands of the political manipulators”; and that “the halo about the sitting judge” was “politically inspired to bedim the motives behind the ticket making.”⁶⁶ Judge Edgar A. Jonas, in the same campaign, heard himself called “a political chameleon.”⁶⁷ Probate Judge Henry Horner, as a candidate for the Democratic nomination for governor in 1932, was constantly attacked as a “tool of Mayor Cermak.” And back in the Municipal Court race of 1906, Republican candidates found their entire party scored for the financial improprieties of one man, Judge Arthur Chetlain, and for recent embezzlements by court clerks, also Republican, who had been elected as “reform” candidates.⁶⁸ This denunciation appeared in the local Democratic platform of that year, and was penned in the vigorous vocabulary of James Hamilton Lewis, then corporation counsel.

Sometimes a judicial race loses entirely its halo of political aloofness and presents one candidate attacking another’s record with a directness not often exceeded in other and supposedly more political circles.

The Bench was unceremoniously dragged into the contest for Republican nomination for the state’s attorneyship in 1932. Circuit Judge Michael Feinberg was a candidate for the office then held by former Circuit Judge John A. Swanson. Swanson charged Feinberg with using the Bench for political purposes.⁶⁹ Feinberg then impaneled a special grand jury to investigate these charges. The other Circuit judges, by a vote of 18 to 2, rebuked Judge Feinberg for his assumption of authority. They also resented his making a laughing-stock of the Bench by announcing charges at political meetings at night and trying to prove them next day in his courtroom. However, the controversy made excellent campaign material.

The effect of the short term is to make the judge a perpetual candidate for office, and this situation not only inevitably compels the judge to weigh the political effects of his official acts, but also

⁶⁵*Chicago Daily News*, October 22, 1929.

⁶⁶*Chicago Tribune*, October 11, 1929.

⁶⁷*Chicago Daily News*, October 15, 1929.

⁶⁸*Chicago Tribune*, August 9, 1906.

⁶⁹*Ibid.*, April 8, 1932.

makes him constantly alert to take advantage of opportunities to build his political fences.

Since a candidate's reputation is largely the result of publicity in the daily press, the more notices which he receives, the greater is the asset of this mention to him politically. One candidate even farsightedly adopted the name of a deceased political leader.⁷⁰

The judge seeking re-election is placed in an extremely difficult position. He must build up his reputation by publicity, yet he is confronted with the profession's taboo of personal advertising.

In a metropolitan constituency a judge's means of identifying himself with the voters are woefully inadequate.⁷¹ In this sense each judge is not only in competition with his fellow-judges and with other candidates, but also with reigning celebrities.

Certain types of personal publicity are a normal part of the judicial job. Self-promotion tactics become objectionable when a judge plans stunts to attract attention, and actually uses the Bench as a campaign platform for re-election or for higher political preferment. In one instance, for example, a judge undertook the rôle of detective to ferret out members of a notorious gang which had been involved in a series of cases which had come before his court. Donning rough garb, he spent several evenings hobnobbing with the "mob" and obtaining evidence to deal with the case on its merits when it came before his court. Some time later this same judge announced himself as an available candidate for the state's attorneyship.

Another politically ambitious judge used to fix bonds in criminal cases at a figure five or ten times the usual amount required. This high bail campaign succeeded in attracting tremendous publicity, for it seemed to epitomize the strong hand of the law dealing firmly and relentlessly with a lawless element who seemed immune to prosecution. A huge amount of controversy resulted, both within and outside of the courts. And the resulting newspaper publicity was undoubtedly beneficial to its instigator, for he was successful

⁷⁰See *ibid.*, June 7, 1932. Joseph F. Mall in 1930 changed his name to Joseph F. Haas, deceased Deneen Republican leader, who had held the office of county recorder for many years. In the April, 1936, Republican primary this same Joseph Haas (ne Mall) again sought nomination as an associate judge of the Municipal Court, much to the concern of Judge John F. Haas, who was also seeking renomination after serving eighteen years on the Bench. See *Chicago Daily News*, April 10, 1936. The unofficial returns placed Judge Haas second in the race with 143,683 votes, whereas Candidate Joseph F. Haas (Mall) ran sixteenth with 59,924 votes.

⁷¹Especially is this true of the judges who sit in the Appellate Court. Normally they have no opportunity to be spectacular. The judges who have sat in the court continuously over a period of years have a definite feeling that they are under a disadvantage when it comes to renomination and re-election. In the 1935 election, for example, a distinguished member of the Appellate Bench confided to a friend that he had no assurance of being renominated, despite the fact that he was of the same political party as the one then in power. He was at an added disadvantage because he belonged to a minority faction.

in being renominated and re-elected, despite the unqualified condemnation of the Bar Association, and also in one instance an adverse political tide. Following his re-election, this same candidate entered the mayoralty primary, then the primary for the state's attorneyship, and later that for the county judgeship—meanwhile continuing his duties on the Municipal Bench.

Political fence-building.—Strict convention suggests that a judge take no part in practical politics. But the keen factional and inter-party competition in Chicago has tended more and more to force the judges not only to campaign actively in their own behalf, but also to participate personally in all of their faction's struggles for power. Whether by accident or by design, the tradition of the judge's being aloof from partisan strife has been shattered. If we trace the political activities of individual members of all local Benches, including the judges of the Appellate Courts, we find that practically all of them are, or have been, workers in behalf of the group with which they are affiliated.

It is true that there are various degrees of participation—ranging on the one hand from the normal participation in political activity, such as membership in the local ward club, to the other extreme of being a party wheel-horse. Recent campaigns provide numerous instances where individual judges have participated in general party campaigns and have not only lent the dignity of their office but persuasiveness of their oratorical skill for the success of the movement. In the mayoralty campaigns of 1931, for example, Judges Matchett, Friend, Rush, and Erickson were mentioned as sitting on the stage at Candidate Albert's meetings.⁷² Judge Horner acted as treasurer of the Cermak campaign,⁷³ and Judges Horner, Fisher, Lindsay, John J. Sullivan, Sonstebj, Padden, O'Connell, McCarthy, Allegetti, and Schwaba were announced as speakers for Cermak.⁷⁴

A second form of direct political activity in which judges often engage is the holding of party offices. Examples are numerous. Judges McGoorty, Horner, Wilson, Sabath, and Caverly were at the same time members of the county Democratic executive committee;⁷⁵ Judge John J. Sullivan also has been a member of this committee;⁷⁶ and in the weeks preceding the 1929 Superior Court election, Judges Fisher, John J. Sullivan, and Schwaba were members of the advisory committee of the Democrats before a coalition slate was agreed upon,⁷⁷ and Judges Borelli and Allegetti were

⁷²*Chicago Herald and Examiner*, February 16, 1931.

⁷³His refund to donors cited in *Chicago Daily News*, June 29, 1931.

⁷⁴*Chicago Tribune*, March 27, 1931, and *Chicago Herald and Examiner*, April 6, 1931.

⁷⁵*Hyde Park Herald*, February 13, 1931.

⁷⁶*Chicago Tribune*, October 2, 1929.

⁷⁷*Chicago Herald and Examiner*, August 9, 1929.

among the forty-five members of the campaign committee selected later for the coalition ticket.⁷⁸ In the same campaign Judges Hamlin, C. F. McKinley, and Hayes were among the organizers, as well as later the candidates, of the Brundage independent movement.⁷⁹ In 1928, Judge William V. Brothers was a Republican ward committeeman in Evanston.⁸⁰ Judge Ross G. Hall continued to serve as Democratic committeeman for Oak Park following his elevation to the Bench in 1929. Judge Henry Horner was chairman of the state Democratic convention in 1928.⁸¹

In the testimony presented at the hearings into the alleged conduct of Judges Eller, Kerner, and Klarkowski, in 1928 (the Crime Commission demanded that they be transferred from the Criminal Court), Judges Klarkowski and Eller were shown to have gone from one polling place to another on primary day, April 10. Judge Klarkowski told of how he made the rounds of precincts of his (the Thirty-third) ward seven times to see if the precinct captains were on the job getting out the votes for the Small-Crowe-Smith ticket.⁸²

When Judge Fisher made his attack upon Brundage in behalf of the Superior Court coalition ticket of 1929, a sharpshooter of the opposition was quick to contrast the candidates themselves, who "pretended to have a hesitancy about taking the platform," and Judge Fisher, who was creating "the spectacle of a judge voluntarily entering the political arena in behalf of the Democratic ticket."⁸³

Except for the remark of Judge Lyle that "it is not inconsistent with good public service for a public official to be a substantial part of the political organization that elected him,"⁸⁴ practically all comments on the subject look to the ideal of a politically independent judiciary.

A type of activity which is undeniably political is the indorsement by judges of candidates for other offices. One outstanding instance of this was the indorsement of a candidate in 1920 by eleven judges of the Circuit and Superior courts. This incident, which "somewhat startled" the Bar Association, was described by it as "undue participation in politics," and was viewed as particularly unfortunate because such action by the judges tended to nullify the Association's previous overwhelming indorsement of the opposing candidate.⁸⁵

"A mere statement of the proposition that the judiciary should

⁷⁸*Chicago Daily News*, October 15, 1929.

⁷⁹*Chicago Tribune*, September 19, 1929.

⁸⁰*Chicago Daily News Almanac and Year Book*, 1928, p. 783.

⁸¹See *Chicago Evening Post*, November 30, 1931.

⁸²*Chicago Tribune*, June 7, 1928, and *Chicago Evening Post*, June 6, 1928.

⁸³*Chicago Daily News*, October 22, 1929.

⁸⁴Address to Seventeenth Ward Republican organization, October, 1931.

⁸⁵Editorial, *Chicago Bar Association Record*, November, 1920.

be removed as far as possible from partisan politics, is its own proof," declared the Bar Association, quoting a resolution of the Circuit judges three years earlier that they "should not sign any written indorsements or recommendations for political positions on behalf of any applicant," and mentioning a similar resolution by the Superior judges about the same time. Hope was expressed that these resolutions would be neither forgotten nor repealed; and it was pointed out that if the judges should allow themselves to nullify the effect of the Bar primaries they themselves would suffer in the long run, as one of the purposes of the primaries was the retention of all sitting judges who had proved their qualifications for such office.

The Bar must have been still more "startled," however, in the spring of 1928, when a pamphlet distributed by State's Attorney Robert E. Crowe's campaign committee carried testimonials from twenty-two judges, chiefly of the Circuit and Superior courts. The *Daily News*, recalling the omission of Judges Thomson and Torri-son from the Circuit Court slate of 1927 by the dominating Crowe political machine, charged that these twenty-two indorsements were probably a matter of "safety first" for the judges, and therefore had "more significance than weight."⁸⁶

In contrast to the alleged "safety-first" procedure of the twenty-two judges indorsing State's Attorney Crowe, may be cited the independent action of Chief Justice William H. McSurely of the Appellate Court a year earlier in giving an emphatic letter of indorsement to Judge Frank Johnston, Jr.,⁸⁷ although in so doing he was bucking the combined power of the Crowe Republican and the Democratic machines. Indorsements were also given Judges Johnston and Charles M. Thomson at that time by three members of the Illinois Supreme Court, including Chief Justice Floyd E. Thompson, Justice Frank K. Dunn, one of its oldest members, and Justice William M. Farmer.

It may be mentioned in passing that this indorsement by Chief Justice Thompson,⁸⁸ and possibly those by the other two Supreme Court justices,⁸⁹ were contained in the press releases of the Bar Association itself (which was managing the campaign for the three judges left off the Circuit Court ticket), despite the vigor with which the Association usually opposes indorsements by judges as a matter of principle. The *Daily News*, however, in a Bar Association ticket story containing news of the two additional indorsements of Judges Thomson and Johnston by Supreme Court members, stated that this "was said to be the first time that the Supreme Court considered a judicial candidacy so vital as to call for a public

⁸⁶*Chicago Daily News*, April 2, 1928.

⁸⁷*Ibid.*, May 10, 1927.

⁸⁸*Chicago Tribune*, June 1, 1927.

⁸⁹*Chicago Daily News*, June 2, 1927.

expression of opinion," and undoubtedly the Bar Association also considered a sacrifice of principle imperative in the face of a practical emergency.

The attitudes both of the members of the Supreme Court and of the Bar Association, however, in this connection, are doubly interesting because of their contrast with a statement of Justice F. R. De Young of the Supreme Court, reprinted approvingly in the *Bar Association Record* less than three years earlier:

Since I became a member of the Supreme Court, no indorsement of any candidate for public office has been given by me. As a citizen I have my preferences which will find expression by voting on election day. But the office I hold has not been and will not be used by me, in any manner, directly or indirectly, to advance the candidacy of any person whomsoever.⁹⁰

Ward friendships and alignments, as well as general political affiliation, seem to enter into the indorsement of aldermen and other lesser politicians by judges as well as by other individuals and groups. These indorsements are therefore often nonpartisan or bipartisan, with various factions of opposing parties uniting behind a single candidate.

Sometimes an indorsement may be official as well as personal. Thus Chief Justice John P. McGoorty of the Criminal Court hailed the election of Mayor Cermak as promising "a new and improved morale" in the police department, and "an able, courageous and honest civil service department."⁹¹

Judges Henry Horner, Denis E. Sullivan, and John J. Sullivan wrote letters of appreciation to Dr. Herman N. Bundesen on his decision not to complicate the mayoral race against Thompson by entering it.⁹²

Still another type of political fence-building is the personal participation by the candidate in social and ceremonial occasions arranged by or for the adherents of the political organization. The intensely personal nature of political association gives a deep significance to purely private occasions such as wakes, funerals, weddings, christenings, banquets, etc. The sense of fitness is shocked when we learn that certain members of the judiciary have publicly participated in occasions arranged in honor of notorious individuals. The personal attachment thus implied does not conform to the ideal of judicial dignity or impartiality. Yet the annals of local politics record several instances in which the participation of judges and other public officers was remarked.

In 1920, for example, three judges of the Municipal Court were listed as honorary pallbearers at the funeral of "Big Jim" Colosimo, overlord of the old levee district. Said the *Tribune*:

Following the body of Big Jim Colosimo to the grave today will move a

⁹⁰Reprinted in the *Chicago Bar Association Record*, October, 1924.

⁹¹*Chicago Daily News*, April 8, 1931.

⁹²*Ibid.*, March 4, 1931.

cortege which should interrupt the complacent thought of Chicago. Three judges, eight aldermen, an assistant state's attorney, a congressman, a state representative, and leading artists of the Chicago Opera Company are listed as honorary pallbearers, as well as gamblers, ex-gamblers, dive-keepers, and ex-dive-keepers.

. . . . Such tribute from men set up to make and enforce our laws, to a man who in much of his life was a law unto himself, is more than the tribute of friendship. It is a tribute to power, regardless of the source or justice of that power.

It is a strange commentary upon our system of law and justice. In how far can power, derived from the life of the underworld, influence institutions of law and order? It is a question worthy of the thoughtful consideration of those entrusted with the establishment of law and order and of those dependent on and responsible for such trust.⁹³

Anthony D'Andrea, who was shot May 11, 1921, had twenty-one judges from Municipal, Circuit, and Superior Court benches listed as honorary pallbearers. Stephen A. Malato, a special prosecutor for the state, and "Diamond Joe" Esposito, a power in West Side politics, at whose parties judges were wont to gather, and who also suffered D'Andrea's fate, were active pallbearers.

Five sitting Municipal Court judges and a former judge of that Bench were reported as having attended the wake, but not the funeral, of Dion O'Banion, celebrated florist-gangster, who was killed November 10, 1924. Three of the judges denied later that they had attended, however, as did also three judges who had been reported as having attended the funeral of Angelo Genna in May, 1925. Both denials were published in the *Chicago Bar Association Record*,⁹⁴ and indicate the eagerness of these judges to keep their record clean.

"The funeral of a great underworld chieftain like Colosimo clearly reveals the nature of the friendly and human relations out of which the alliance of crime and vice with politics develops," commented John Landesco, from whose graphic account of Chicago gangland in the *Illinois Crime Survey* the foregoing data are cited. He continued:

Judges and other politicians who refrain from attendance at funerals will be present at the wake. Political protection for the powerful financial interests of organized crime is coming to rest less and less upon friendship and more and more upon pecuniary considerations. But to the extent that friendly relationships and neighborhood connections still remain the bond that cements relations of gangster and politician, they will continue to find expression at the wake and at funerals as long as human nature remains human nature.⁹⁵

Another insight into the exigencies of practical politics is obtained from the attendance of judges and prominent political leaders at social occasions arranged by "Diamond Joe" Esposito.⁹⁶

⁹³*Chicago Tribune*, May 15, 1920.

⁹⁴November, 1924, p. 4, and May, 1925, p. 2.

⁹⁵*Illinois Crime Survey*, pp. 1025-39.

⁹⁶For biography of Esposito see the *Chicago Tribune*, March 31, 1929.

Described as the "proprietor of a bootleg liquor café, a labor racketeer, and protector of gamblers, bootleggers, and alky cooks" and as "fat, oily, ingratiating, and ignorant," but "shrewd in a gross way that convinced persons who wished to be convinced," Esposito was for nearly two decades a political power in the West Side wards.

"My fren's are de beegest an' highest men in de ceety," boasted Diamond Joe—and the roster of guests at two of his parties bears out his assertion. The christening of his son, held November 15, 1925, was attended by a United States senator, a former state's attorney (who prepared one of the chapters in the *Illinois Crime Survey*), four judges of the Municipal Court, and the then clerk of the Probate Court. Later at a "victory banquet," held in Esposito's honor, twenty notables, including thirteen judges, three former judges, and the then clerks of the Illinois Supreme, Municipal, and Probate courts, were in attendance.⁹⁷

And finally, on March 19, 1928, less than two days before he died with fifty-eight gang bullets in his body, Esposito gave another party, and the guests included the then chief justice and three associate judges of the Municipal Court; two judges of the Superior Court; the then clerk of the Circuit Court; and other politically prominent persons of both parties.

"Diamond Joe" and many other political personalities also attended a dinner of the Italian-Republican Club at the Morrison Hotel, October 16, 1924.⁹⁸ The occasion was referred to as "a dinner of the Genna gang," because at the speakers' table was James Genna—three of whose brothers, notorious bootleggers, were killed within six months of each other in 1925. The roster of guests at this dinner included the chief clerk and bailiff of the Municipal Court, the clerks of the Circuit and Superior courts, the Illinois secretary of state, the lieutenant-governor, the state's attorney of Cook County, a Circuit judge from Rockford, a judge of the Municipal Court, a former judge of that court, and numerous other county and state officers and candidates for various public positions.

Public appearances such as these are of great value (unless too highly publicized!) to the politician and to candidates for office. "One vote is as good as another." The basis of political power is the personal friendships between all elements of the party group, and the almost feudal allegiance which they owe to the leaders of the group. But while the attendance of judges and other officers and candidates at such festivities may benefit them on election day, it also tends to establish a personal obligation which may be invoked in violation of a judge's duty to the public.

⁹⁷For photographs of these groups see *ibid.*, March 1, 1926.

⁹⁸*Ibid.*

The courts should seek to be equal, impartial, and formal. Political friendships run counter to the impartiality of formal law. The reciprocal relationship which the political system establishes between the successful candidate for the judiciary and this type of political henchmen dangerously imperils the independence and integrity of the Bench.

Using judicial office as a spring-board.—Advancement from lower to higher levels within the judiciary is recognized as highly desirable, although under the elective system the requirements of the campaign are formidable distractions both in time and attention from the routine work of the court. In Cook County the sentiment that a judge should resign while seeking another office has never taken hold, and there has been an increasing tendency for judges to run for other positions. In the past forty years, seventeen judges have made twenty non-judicial races. Fourteen of these races occurred within the last thirteen years, and nine within the last five years. In the April, 1932, primary election, five judges were candidates for other offices. A careful search of the public record has revealed only one instance in which a local judge resigned from the Bench in advance of nomination. This instance involved John G. Altgeld, who was elected governor in 1892. A record of judges who have sought other offices is presented in Table LII.

TABLE LII
JUDGES WHO HAVE RUN FOR NON-JUDICIAL OFFICE

Date	Judge	Court	Office Sought	Did Incumbent Resign Before Becoming Candidate?
1892	Altgeld.....	Superior.....	Governor.....	Yes
1897	Sears.....	Superior.....	Mayor.....	No
1901	Hanecy.....	Circuit.....	Mayor.....	No
1905	Dunne.....	Circuit.....	Mayor.....	No
1916	Olson.....	Ch. J. Munic..	Mayor.....	No
1919	Olson.....	Ch. J. Munic..	Mayor.....	No
1920	Crowe.....	Circuit.....	State's Attorney.....	No
1920	Matchett.....	Circuit.....	State's Attorney.....	No
1920	Barasa.....	Municipal....	State's Attorney.....	No
1923	Barasa.....	Municipal....	Mayor.....	No
1923	Dever.....	Superior.....	Mayor.....	No
1928	Swanson.....	Circuit.....	State's Attorney.....	No
1928	Lindsay.....	Superior.....	State's Attorney.....	No
1931	Lyle.....	Municipal....	Mayor.....	No
1932	Lyle.....	Municipal....	State's Attorney.....	No
1932	Feinberg.....	Circuit.....	State's Attorney.....	No
1932	Hartigan.....	Municipal....	State's Attorney.....	No
1932	Horner.....	Probate.....	Governor.....	No
1932	Gentzel.....	Superior.....	Attorney General.....	No
1932	Kerner.....	Circuit.....	Attorney General.....	No

HOW POLITICS INTERFERES WITH JUDICIAL APPOINTMENTS

Although the judges of the Chicago and Cook County courts appoint comparatively few officers, there are many indications that these appointments are subject to political "suggestion," if not dictation. The number of appointive positions would be considerably larger if the clerks of the six local courts and the chief bailiff of the Municipal Court were appointive instead of elective. The fact that in addition to these offices those of sheriff and prosecutor are also elective, and that their offices operate without the safeguards or the permanent tenure provided by civil service, surrounds the judicial mechanism with politically sponsored employees. In 1931, for example, it was shown that six Democratic ward committeemen occupied positions in the Municipal, Superior, and county courts. A detailed comparison of the pay-rolls of the various staffs appointed by these auxiliary officers with the personnel of the various political organizations involved would show an amazing number of personal links between the courts and the political mechanisms which dictate the nomination and election of the judges.⁹⁹ In 1929 the clerks of the Municipal Court were "all in politics, usually captains of precincts in their wards," it was reported by Raymond Moley in the *Illinois Crime Survey*.¹⁰⁰

Appointments made by the judges fall into two divisions—those relating to the work of the courts, and those assigned to the judges by law but not directly connected with the administration of justice. Those of the first type include the appointment of masters-in-chancery, jury commissioners, probation officers, receivers, and personal bailiffs. To this list should be added the members of the Board of Election Commissioners appointed by the county judge. Appointive responsibilities of the second type include the constitutional duty assigned to the Circuit Court to fix the number of employees in the county fee offices, and, until April, 1934, the appointment of commissioners of the South Park System in Chicago.

Each judge of the Circuit and Superior courts has a master-in-chancery. Theoretically, the masters are appointed by the judges of the Bench acting jointly, which under the rule of judicial courtesy permits each judge to nominate his own master and to appoint his own receivers, etc. When the growing volume of receiverships and other suits, with great possibilities of patronage, began to flood the local courts (with the deepening of the depres-

⁹⁹The following passage from the *Illinois Crime Survey*, p. 850, illustrates this tie-up as of 1912-13: "Hoyne [state's attorney] revealed an astonishing array of precinct committeemen and captains of the First Ward holding jobs as bailiffs, jail guards, and as minute clerks, as well as in other capacities in the courts, the sheriff's office, the county treasurer's office, the county jail and the Bridewell—especially in positions where they can be of help to the 'boys' when they get into trouble."

¹⁰⁰P. 414.

sion) the political organizations decided to aid the judges in selecting their appointive personnel. Commenting editorially in 1930 upon a report that the Thompson "city-hall" machine had demanded that their nominees agree to turn over to the machine the selection of masters-in-chancery and appointments of receivers, the *Chicago Daily News* declared it was "common knowledge" that "in large part, the appointment of masters-in-chancery rested with the party bosses."¹⁰¹ "Political influence has much to do with the appointment of masters-in-chancery," the same paper asserted more than two years later.¹⁰²

The judges of the Circuit and Superior Court appointed Charles S. Neumann jury commissioner, February 17, 1933, to fill the unexpired term of his brother, Leopold, who had died the previous October 29 while making a political speech in Judge Horner's gubernatorial campaign. It was the "wish of Mayor Cermak" that he succeed his brother, Mr. Neumann told a *Tribune* reporter.¹⁰³

Too much "America First," was Chief Justice Harry Olson's diagnosis of what ailed the Municipal Court in 1928. In that year he told how the twenty-one judges affiliated with the Crowe-Thompson "America-First" organization had tried to create jobs for fifty clerks that were not needed, but actually did raid the courts for the jobs of thirteen probation officers.¹⁰⁴ Three of the persons thus dismissed had political sponsors who "hollered." As a result, these three were reinstated. A newspaper of December 13, 1927, reported the events at this meeting as follows:

Eight Democratic municipal judges yesterday bolted a meeting of the jurists, charging that the Republican judges had held a private caucus and oiled the machinery for getting control of the probation department of the municipal courts. The Republican judges remained . . . and by vote ousted thirteen probation officers, many of them veterans of the service.

The bolting jurists were listed as Judges John J. Rooney, Peter H. Schwaba, Joseph Burke, Francis Allegetti, Francis Borrelli, Philip J. Finnegan, Matthew D. Hartigan, and Frank M. Padden. The city council finance committee, headed by Alderman John S. Clark, a Democrat, retaliated, however, by cutting the number of probation officers from twenty-four to fourteen.¹⁰⁵

Three years later Judge Olson's successor, Chief Justice J. J. Sonstebly, Democrat, had a similar experience when the Republican judges of the court, still in a majority despite the Democratic victory in November, 1930, eliminated eight of the incumbent probation officers, six of them Democrats, in filling nine places with comparatively or wholly inexperienced appointees, and in imme-

¹⁰¹October 10, 1930.

¹⁰²February 12, 1933.

¹⁰³*Chicago Tribune*, February 17, 1933.

¹⁰⁴*Ibid.*, April 24, 1928.

¹⁰⁵*Chicago Daily News*, December 21, 1927.

diately electing a total of twenty-eight probation officers in opposition to the chief justice's plans for filling the positions through competitive examinations.¹⁰⁶ "It is spoils politics," said Chief Justice Sonstebly after his appeal for one week's time to investigate the qualifications of the nine new appointees had been denied. "The Republican majority ignored the committee on probation officers and made a partisan and political football of the probation system of the Municipal Court." Four of the nine persons had held minor political appointments before, and three others had sold advertising, real estate, or sausage casings. Only one had any considerable professional experience in social service work.

The adult probation staff of the Criminal Court has been similarly affected by politics. Discussing the situation in the *Illinois Crime Survey*, Professors A. A. Bruce, E. W. Burgess, and Albert J. Harno had this to say about it in 1929:

It was supposed that judges were comparatively free from political maneuvers, and that they would exercise great care in the selection of probation officers, therefore the appointment of such officers was placed by the act with them. According to the statute the judges employ and discharge and the county commissioners supply the funds. The events of the last sixteen years (the period the statute has been in force) have demonstrated, at least in Cook County, that the judges are not out of politics, and that occasionally they lapse into worldly and profane pursuits. Cook County has a chief and forty probation officers. Some of these, we have found, are faithful to their tasks, but others are mere time-servers who owe their appointments to some political personage. The chief, in the main, is one in name only. He does not employ and he cannot discharge. If an officer is too lazy and declines to go out on an assignment, his only recourse is to report his case to the judges, and relief from that quarter is not always forthcoming.¹⁰⁷

Determining the number of employees in the county fee offices.—A twenty-five word clause in the Constitution of 1870¹⁰⁸ directs the Circuit Court "to determine by rule, to be entered of record," the number of deputies and assistants in the "fee offices"—those of the clerks of courts, treasurer, sheriff, coroner, and recorder of deeds.

The county fee offices are the great source of patronage for the political party organizations. The heads of all of these offices are elective. Their incumbents have always been persons of great political strength. So influential were these fee officers at the time the Constitution of 1870 was framed that they successfully resisted an attempt made in the convention to have these officers appointed rather than elected.

There are between 1,700 and 1,900 positions in these offices.¹⁰⁹ None of them is under civil service, and all are therefore subject to patronage considerations. Biennial attempts to extend the county

¹⁰⁶*Chicago Tribune*, December 8, 1931.

¹⁰⁷*Illinois Crime Survey*, p. 552.

¹⁰⁸Art. X, sec. 9.

¹⁰⁹On January 29, 1932, J. L. Jacobs, county efficiency engineer, reported the number to be 1,931. See the *Chicago Tribune* of that date.

civil service to include these positions have been defeated in the legislature.¹¹⁰ These defeats are due chiefly to the opposition of the political organizations. This number of positions would enable a machine to man nearly two-thirds of the election precincts.

These considerations and their bearing on the success of the political organizations that control the nomination and election of the judges, obviously constitute a grave barrier to a *judicial* determination of how many employees each and all of these offices shall have for the ensuing fiscal period.

Since jobs mean votes and votes mean power, the party organizations have always taken a keen interest in these determinations of the court. If the number of positions is lowered, deserving workers must be dismissed. If the number is increased, more jobs are available for the politically deserving. Thus, whatever determination the court makes, its rule touches the political organizations represented in the fee offices. The judges must also look to these same political organizations for their renomination and re-election.

The judges act through a "Committee on Help."¹¹¹ It receives personnel recommendations from the fee officers and has also had the advice of an efficiency engineer employed by the county board. The committee's figures have generally been nearer those of the fee officers than those of the efficiency engineer.

One of the reasons Judge Charles M. Thomson was denied renomination on the coalition slate of 1927, it will be recalled, was his opposition while a member of the "help committee" to County Treasurer George F. Harding's request for 135 more jobs in that office.¹¹² Judge Mary Bartelme stated that she had been denied the usual second and third term on the "help committee" because of her efforts to economize.¹¹³

Indirect evidence that some of the judges have followed political dictates appeared in 1929, when the Cook County government faced a deficit of \$4,700,000. The heads of the fee offices signed a "round robin" agreeing to accept a 10 per cent reduction in personnel, but the judges' committee cut the total only 2.9 per cent, as compared to a 17 per cent reduction facing the county offices as a whole.¹¹⁴ Judge Feinberg of the committee had previously stated that since their duty was simply "to fix the number of employees to run an office efficiently," they "were not concerned whether the county is broke or not."¹¹⁵ Yet the county efficiency adviser had recommended

¹¹⁰In 1911 a county-wide civil service statute was enacted but was voided on a technicality (see: *McAuliffe vs. O'Connell*, 258 Ill. 186).

¹¹¹See Albert Lepawsky, *The Judicial System of Metropolitan Chicago* (University of Chicago Press, 1932) p. 210.

¹¹²*Chicago Tribune* and *Chicago Herald and Examiner*, May 11, 1927.

¹¹³*Chicago Herald and Examiner*, January 23, 1931.

¹¹⁴*Ibid.*, December 3, 1929.

¹¹⁵*Chicago Tribune*, November 20, 1929.

a reduction of the staff by 270, or nearly five times the 58 voted by the judges.¹¹⁶

If the judges were interested in reaching a conclusion not tinged by political realities, they could have paid greater heed to the recommendations of the efficiency adviser, who again in 1932 recommended that without abolishing the patronage system a minimum of 285 positions could be eliminated, and that under a well-administered merit system, a total of 330 positions could be eliminated without impairing the service.¹¹⁷

Clearly this responsibility of the judges is another entanglement rife with political possibilities, and should be transferred from the Circuit Bench to the board of county commissioners, where it logically belongs as a part of the budget procedure.

Park politics.—Until April 10, 1934, perhaps the gravest non-judicial function of the local courts was the appointment of the commissioners of the South Park System, an independent taxing district in the city of Chicago. Under a statute enacted in 1869, the judges of the Circuit Court of Cook County were saddled with the appointment of these commissioners, in the hope of keeping that system "out of politics." This arrangement was continued for sixty-four years, until it was superseded in 1934 by the adoption by popular referendum of the Chicago District Park Act.¹¹⁸ The experience under the earlier arrangement supplies eloquent evidence of the dangers inherent in any plan which seeks to encumber the judicial office with political functions.

The sponsors of the plan desired, in the words of a member of the first commission, L. B. Sidway, . . . to secure as far as possible the selection of good men and to keep the administration out of politics . . . the judges would rank considerably above average men and were likely to be members of different political parties; they also would know or could readily ascertain the qualifications of the men whom they were about to appoint.¹¹⁹

The act was ratified by referendum and was later affirmed by the Illinois Supreme Court. The General Assembly subsequently modified the original method of selecting the commissioners by empowering the governor to appoint them. But residents of the South Park District resisted the change by bringing *quo warranto* proceedings against a commissioner named by the governor. The case came before the Supreme Court on appeal and the amendatory act was held inoperative in so far as it applied to the South Parks.¹²⁰

¹¹⁶*Chicago Herald and Examiner*, December 3, 1929.

¹¹⁷Report in the *Chicago Tribune*, January 29, 1932.

¹¹⁸The act merged twenty-two independent park authorities, including the South Park System, into a single unit, the five commissioners of which are appointed by the mayor of the city of Chicago. See *Chicago Daily News*, May 11, 1934.

¹¹⁹Statement quoted in an annual report of the South Park Commissioners dated February 28, 1909.

¹²⁰*Cornell v. the People*, 107 Ill. 372.

For many years the plan appears to have operated successfully. In 1909, for example, Mr. Sidway expressed the opinion that it would be difficult, even if possible, to find another great city corporation controlling the employment of so many men and the expenditure of so much money which had for about forty consecutive years kept as free from all political influences as has the South Park Commission, or whose administration has met with so little criticism by the people.¹²¹

At that time the South Park System was the largest of the city's park systems. It employed upward of one thousand persons, and had an annual budget of approximately two million dollars.

Although a budget of this size was not likely to be overlooked by "political influences," it was a mere bagatelle as compared to the scale of expenditures that was to develop as a result of the movement, initiated in 1909, to reclaim the south shore of Lake Michigan for park and recreation purposes.¹²² That movement provided the enormous stakes for which "political influences" greedily grasped and schemed to bring under their control. In so doing they involved the process of judicial selection. The control of the South Parks lay through the control of the Circuit judges, and this control was established by manipulating the nomination and election of these judges.

That the incentives of sixty million dollars in contracts and several hundred jobs operated to inject the Circuit Bench into "politics" is a matter of common knowledge which is difficult to substantiate by definite proof. It is known, however, that in return for organization support, candidates for the Circuit Bench were required to bind themselves to vote for whomever the leaders designated as their choice for South Park Commissioners. To the candidate, of course, such pledges would be hostages to fortune. Or they might be regarded as merely delegating to the duly constituted agency of the party system a secondary responsibility of the office, which was in no way related to the primary task of judicial administration.

Definite instances may be cited, however, of political and other considerations with which the appointment of the South Park Commissioners involved the Circuit judges.¹²³

¹²¹*Report of South Park Commission, 1909.*

¹²²For the history of the South Shore reclamation movement see: *Report of the Lake Shore Reclamation Commission, 1912*, and the *Chicago Daily News Year Book, 1916*, p. 667; 1920, p. 895; and 1922, p. 741.

¹²³For example, in December, 1932, Commissioner William H. McDonnell, Democrat, was appointed to the board by a vote of eleven to nine, the other candidate being Thomas E. Wilson, Republican. Since the Republicans had a working majority, the question arises, How could a Democrat be elected? Disregarding instructions from the Republican County Committee, Judges Feinberg and Klarkowski, Crowe-Republicans, voted with the Democratic minority to elect Mr. McDonnell. A few hours prior to this action the nineteen Republican Committeemen of the South Side wards that comprised the South Park district, immediately caucused and unanimously indorsed Mr. Wilson. The eleven Republican members of the Circuit Court were then asked to meet at the Bismarck Hotel an hour before the official meeting of the Circuit Bench.

This responsibility was fittingly described as "an excrescence upon the judicial office" and its elimination urged as "one of the obvious requirements of judicial reform in Cook County." In a left-handed manner the new Chicago Park District Act appears to have accomplished just that.

HOW POLITICS AFFECTS THE ADMINISTRATION OF CIVIL JUSTICE

That political influence has affected certain phases of the administration of civil justice in Cook County has been common gossip for some time. It has been known, for example, that in filing civil cases lawyers have studiously avoided certain judges whose affiliations they have regarded as too political to give their causes impartial hearing. In one celebrated proceeding that was loaded to the hilt with "political dynamite" a judge from the Appellate branch was drafted to preside and was agreed upon by counsel chiefly because it was known that the judge would not be a candidate for re-election at the end of his term.

Occasionally allegations have also appeared in the public press that political influence has been a factor in certain types of civil proceedings. It has been charged, for example, that certain illegal greyhound racing enterprises have been "protected" from police raids by "temporary" injunctions issued by a court and that the injunctions were dissolved only after the racing season had closed. The alleged "hook-up" was that the protected establishments were owned by interests whose attorney was a blood relative of the judge who issued the injunction. Another case involved a "taxi-dance" hall which operated for nearly a year under a "temporary" injunction. The hall had been raided and "closed" by the police, but con-

Only nine of the eleven Republican judges responded. Judges Feinberg and Klarkowski were the absentees (*Chicago Tribune*, December 8, 1932). The certainty of the set-up appeared in the fact that in advance of the meeting of the judges two newspapers announced the action as slated to happen.

Another instance involving South Park appointments in bipartisan politics: At the time Michael L. Igoe's term expired in 1929, Howard W. Elmore, a Deneen Republican, was president of the Board of Trustees of the Sanitary District. The District had seven trustees at that time, three Crowe-Thompson Republicans and three Democrats. Under the reported deal Elmore was elected Sanitary District president with Igoe to be re-elected South Park member by the votes of the four Deneen Circuit judges voting with the nine Democratic judges. Had Igoe failed of re-election, Elmore would have been ousted as Sanitary District president (*Chicago Evening American*, February 28, 1929).

The close affiliation of other South Park commissioners to the Democratic organization is shown by their other public positions. Edward J. Kelly, the president of the system, was for many years chief engineer of the Sanitary District and in 1933 was the organization's choice for mayor as successor to the late Mayor Cermak. Benjamin F. Lindheimer was appointed president of the Board of Local Improvements in the Cermak administration and was later made chairman of the Illinois Commerce Commission, both powerful political offices. Mr. Lindheimer is a brother of Horace G. Lindheimer, who defeated Igoe for Democratic committeeman of the Fifth Ward. Louis J. Behan, a recent commissioner, was an office associate of Homer K. Galpin, former chairman of the Republican County Committee. John Bain was a political associate for many years of the Deneen Republican organization.

tinued to operate under court "protection." Whether the protection was overtly or only passively extended was not clear, for charges of "politics" were hurled in open court by both prosecutor and judge.¹²⁴

It should be stated that the writer does not intend to infer that all civil proceedings are so affected. Such clearly has not been the case, for the vast majority of the tremendous volume of civil cases is handled without criticism or allegation of undue influence. For the most part, the judges who preside in these branches are highly regarded as competent and impartial jurists, as the reports of the Bar's committee on candidates well show. The inference which we believe the information justifies is that the present system of judicial selection surrounds all the courts with an influence that becomes active in proceedings where the disputants are personally affiliated with the party organizations; or where the cause concerns an interest to which the party organizations are obligated; or, also, where the political organizations discern an opportunity to extend their patronage domains.¹²⁵

Receiverships.—No more complete or satisfactory proof of the foregoing statements could be obtained than the evidence revealed by two investigations of the handling of receiverships in the Cook County courts during the period 1930-33. The charge that politics was involved in equity proceedings appeared in the public press at intervals during 1930-31. It blossomed into a full-fledged issue during the primary election campaign in the first quarter of 1932, when Judge John A. Swanson, Republican candidate for renomination as state's attorney, charged that Judge Michael Feinberg, his opponent for the nomination, and Judge Stanley H. Klarkowski, political associate of Judge Feinberg, had submitted to political dictation from their sponsor, Robert E. Crowe, in the handling of receiverships. Judge Swanson's charges were made at the height of the campaign and were in the form of an open letter¹²⁶ to the chairman of the Chicago Bar Association's Committee on Receiverships and Mortgage Foreclosures.

While the missive was a campaign document, the allegations were sufficiently grave as to occasion the Association to act. It did so, by appointing a special committee on receiverships. This committee conducted an investigation for eight months. It interviewed practically all of the judges who had served in the civil tribunals during the period. It searchingly cross-examined them as to their

¹²⁴*Chicago Daily News*, April 22, 1932.

¹²⁵The obligation which a judicial nominee feels toward the organizations is shown by a remark attributed to a candidate in the June 4, 1934, uncontested election. After the party convention had ratified his selection, he said: "I fully realize I am a creature of this committee and will bear in mind my obligation to it throughout my term on the Bench" (Paul R. Leach, writing in the *Chicago Daily News*, June 1, 1934).

¹²⁶*Chicago Tribune*, April 2, 1932.

policies, practices, and attitudes in receivership cases. It interviewed more than two hundred individual receivers. It then reported its findings in what is probably the most scathingly outspoken document ever issued by the Association. The committee's report pictured the situation out of which the abuses it cited had developed. The facts are presented in detail elsewhere in this study,¹²⁷ but will be reviewed briefly here to provide an adequate setting for the committee's conclusions.

The personnel of the Circuit Court in 1927, the committee noted, included nine Democratic judges and eleven Republican judges, the latter coming from different factions of the Republican party. Owing to the fact that no one political group had a majority, some form of bipartisan arrangement was necessary, and two of the judges from one of the Republican groups had voted with the Democratic judges on matters relating to appointments and organization. "This undoubtedly explains why during 1930-32 the chancery branch of the Circuit Court consisted of two Democratic judges and two Republican judges from the same group," the report stated. It continued:

The committee interrogated several of the judges with reference to this matter. Practically all expressed ignorance of any such arrangement as outlined above, or protested that they had only hearsay information. How or why the slate for the organization of the court originated appears to be a mystery.

Coming down to 1930 and the beginning of the depression, the committee found that

when the large volume of foreclosures began, the judges had become accustomed to the idea that patronage at their disposal might properly be distributed as their political sponsors suggested.

With the depression continuing through 1931 and 1932, the problem of satisfying the demands of party workers had become more and more acute. All the chancellors of both courts agreed that they have been beset upon all sides by applicants for appointments as receivers. In view of the scarcity of lucrative employment, it would not be surprising to find that the power of the court to appoint receivers suggested itself to political leaders as a tempting opportunity for satisfying the demands made upon them, and that political influence had found its way into the conduct of foreclosure proceedings.

Touching the diverse practices of the various judges in naming receivers, the committee stated that some judges named as receiver a party on whom parties to the litigation agreed. This is the method prescribed by the law.

Other chancellors allowed the parties in litigation to name the receiver, but reserved the naming of the receivers' attorney for themselves. Still others paid no attention to the wishes of the litigants, but insisted on naming their own candidates, and as the report noted,

some even required litigants to leave a blank space in the order naming the receiver, which is subsequently filled in when the parties are not in court and have no opportunity to voice objections. Complaint has been made that the

¹²⁷P. 289-94.

chancellors have been guided by personal friendship and political associations rather than by a consideration for efficient management of the foreclosed property. That many such appointments have been made there can be no doubt. An investigation made by the committee of more than two hundred receivers indicates that political considerations entered into the selection of many of them.

The committee took little stock in the explanation advanced by some chancellors, who held that "they were duty bound to give preference to persons concerning whom they had personal knowledge." Such appointees, the report averred, "appear in many instances to be lacking in the necessary qualifications for receivers and led the committee to conclude that a plausible reason had been advanced to conceal a bad practice."

"Certain chancellors have proposed that each should draw up a list of 'qualified persons' and that all receivers be appointed from such lists," the committee disclosed.

"This assumes that the chancellors would independently select a list based solely on qualifications and experience," the report observed.

Such an assumption is not warranted by the history of the courts. On the contrary, the committee believes such a system would only create a new outlet for political patronage. Many of the judges frankly acknowledge that in appointments they have followed the suggestions of their political sponsors. . . .

Inevitably, such a system would draw the courts even deeper into politics and it would be difficult to predict where the tendency would stop. . . .

Appointment of receivers is not a piece of patronage [the report concluded]. It is a step in the determination and protection of the rights of the parties in interest. It is the recommendations of the parties in interest that we emphasize, for it may be that the complainant is a mischief maker with a trifling interest.¹²⁸

Discussing the political aspects of the matter, the committee declared that politics had been a blight on the Cook County Bench since 1927.

This blight had become progressively worse since 1930, the committee found, until now some of the judges openly admitted they are subjecting their judicial functions to the dictates of the politicians.

The conduct of the judges in these matters had been such, the committee declared, as to "tend to destroy confidence in the impartiality of the courts in the exercise of all their functions."

The report refrained from mentioning any judges by name, but certain political activities of the judiciary were cited so pointedly as to leave no doubt in the minds of informed attorneys as at which judges the report was directed. On the subject of political spoils, the report commented as follows:

It may be fairly stated that it was the practice accepted by the judges and their political sponsors alike that such patronage as the laws placed at the disposal of the courts should be treated as political spoils to be distributed as dictated by party requirements.

¹²⁸*Chicago Tribune*, February 15, 1933.

The report also condemned the judges upon the grounds that they had permitted their political sponsors to dictate, or at least pass upon, their appointments of master-in-chancery—thus transforming this arm of the court into an instrument of political patronage. On this point the report stated:

From the committee's investigation it appears that a candidate for either Circuit or Superior Court is expected to, and does, designate as his master a person selected by or satisfactory to the judge's political sponsors. The judges themselves qualify this by stating that the person so selected must be competent to serve in the capacity of a master-in-chancery. In a number of instances this qualification apparently has not been insisted upon, for some of the judges, in discussing with the committee a suggestion that the cases should be assigned by rotation, stated that they considered such a plan undesirable for the reason that some of the masters are incompetent to handle cases of importance.¹²⁰

Other grounds of criticism were:

That in 1927 certain Circuit judges allowed their political bosses to interfere in such administrative functions as the election of a chief justice, of chancellors, and of the help committee, and that by 1930 a majority of the Circuit judges had surrendered this function to their political sponsors.

That in 1931, having yielded control of their administrative functions, the judges were beset by political leaders who saw a tempting chance to satisfy the demands of unemployed party workers by employing the powers of the court in appointing receivers.

The vast extent of the properties that came under the courts' jurisdiction is indicated by the following facts: On January 1, 1933, more than one billion three hundred million dollars of real property was in process of foreclosure in cases under the jurisdiction of the Superior and Circuit courts of Cook County;¹³⁰ in February, 1931, there were 11,000 foreclosure cases pending in the two courts;¹³¹ when 800 receiverships, involving \$75,000,000 of property, were reassigned in July, 1931, it was estimated that upward of \$3,500,000 annually would be expended for upkeep on these properties.

All of the items of expenditure in this vast sum were subject to approval by the judges who appointed the receivers for the properties.¹³² On the same ratio of upkeep to value more than sixty million dollars would be expended annually for upkeep on the properties involved in foreclosure proceedings two years later. The size of the sum, the tens of thousands of receivers, attorneys,

¹²⁰In June, 1929, there were approximately four hundred receivers acting as the alleged right arm of the court. Of this number, one was found to be an absconder in nine estates, four were real estate brokers who had had their licenses revoked, and at least one receiver was unable to sign his own name (*Chicago Bar Association Record*, XIV [April, 1931], 151).

¹³⁰*Chicago Tribune*, April 2, 1933.

¹³¹*Chicago Bar Association Record*, XIV (April, 1931), 151.

¹³²*Chicago Daily News*, July 16, 1931.

janitors, domestic help, etc., to be employed, and contracts awarded, and all of the detailed expenditures to be supervised, give an idea of the gigantic problem of property management thus created. This phase of the matter—"probably the greatest amount of property, in value, ever handled by so small a group of individuals"—was declared by another group of investigators¹³³ to be the "worst problem" of the situation, for the judges had neither the experience nor the organization to handle it properly. Observed these investigators:

The vast patronage suddenly made possible by the army of receivers, managers, and attorneys necessary to manage all these properties has resulted in engulfing the chancellors with a swarm of political parasites, who believe that the chancellor, an elected official, owes his office to their good graces. . . . With city and county payroll jobs cut off by lack of funds, this pressure has been aggravated. Due to the laxness of the voting public, these ward politicians are largely correct in their belief that they elect the judges and the latter are aware of this. This is the most serious problem. . . .

The patronage aspects of receiverships are only too apparent from the records published in the daily press. Judge Swanson's communication enumerated lists of cases in which political association or blood relationship is traced between the judges and the receivers, masters, or receivers' attorneys designated by them to handle the properties. One master-in-chancery, for example, who was law partner of the judge's political sponsor, was shown to have received aggregate fees of \$159,000 in eighteen months' time, and had been awarded 255 other cases from which additional fees would be collected. At the same time he was drawing \$10,000 annually as attorney for a park board, a position awarded him under a bipartisan deal.

An attorney for a receiver was shown to be organizing, for political purposes, depositors' committees from closed banks then in litigation before the judge and of conducting the judge's campaign for nomination as state's attorney. Another receiver was shown to be the candidate of the judge's faction for ward committeeman and in charge of the judge's campaign for nomination in the district.

In another instance an alderman¹³⁴ was made receiver of several

¹³³Professor Homer F. Cary and associates of Northwestern University Law School in a report made to the Property Management Division of the Chicago Real Estate Board and published in the *Illinois Law Review*, January-February, 1933.

¹³⁴This case had an interesting political sequel. When the receiver was a candidate for re-election to the city council, the Democrats nominated an opponent. As a part of the campaign, the Democratic attorney-general made an extensive investigation of the Republican alderman-receiver's administration of the properties. All the old charges which had been broadcast in the press months before were rehashed in this new connection. Although no new material was developed, and although the receiver-candidate could not be proved guilty of any law violation, the unfavorable publicity so damaged his aldermanic candidacy that he was overwhelmingly defeated.

important hotel and apartment-house properties. His state senator and political affiliate was made receiver's counsel. The ward committeeman who had sponsored both was engaged in the coal business and sold coal to the properties. The receiver, in addition, organized a property management and insurance concern, with a brother in charge, to do business with the properties. On three occasions committees of bondholders sought to have the receiver removed, but in each case the judge sustained his appointee, who was of his same faction. After the judge's death, however, the receiver was displaced.

HOW POLITICS AFFECTS THE ADMINISTRATION OF CRIMINAL JUSTICE

The complex nature of the mechanism that is employed in the administration of criminal justice makes it difficult to allocate definite responsibility among the agencies involved in its inadequacies. Four agencies, in general, may be said to be involved: the police, the prosecutors, the judiciary, and the various court attachés.

Appointments.—Positions in these four services are filled by political appointment. This is directly true of the judges, the prosecutor, the clerks of the courts and the sheriff, and of their appointive subordinates. While the police are nominally selected by civil service, the department has so long been subject to political manipulation by the city administration that, in Mr. Healy's words, it has been "the adjunct of whatever political faction happened to be in power."¹³⁵

The fact of political sponsorship for both elective and appointive officers involved in the administration of justice helps to explain why the prosecution of crime has so frequently been perverted at so many points. The politically sponsored employee will "go slow" in pressing a case if it involves someone to whom the organization has extended its protection. In addition to this creeping paralysis of delay, justice may be perverted by deliberate acts which may be explained as "errors" if detected, or responsibility for which may be entirely lost in the general shuffle.

However incorruptible individual officers may be, the environment of party loyalty and favoritism tends to subject the entire judicial mechanism to political influence. If the administration of justice is not corrupted, at least considerations are allowed to creep in which are bound to impair the independence and integrity of the Bench. For evidence to support this assertion let us analyze the points in the process at which a corrupt judge could conceivably pervert the course of justice, and let us search the record of local events that tend to sustain this contention.

¹³⁵See *Illinois Crime Survey*, pp. 357, 358.

"The fine art of the fixer."—An insight into the political requests that bedevil the chief justice of the Criminal Court is obtained in Judge Michael L. McKinley's description of "the fine art of the fixer." He says:

Contempt of the courts and of government generally is not to be wondered at when we who are in public life reflect that a considerable portion of the public is educated in the belief that "anything can be fixed if you only find the 'right' person to do the fixing." Hence we have a condition that seems to be permanently established, where half the holders of public office are continually called upon by the harrassed "heelers" in the ward or precinct for "favors" or worse—things which at best involve a compromise with conscience and at worst a betrayal of their oaths.

Though service in the Criminal Court is distasteful to the majority of judges, by the rule of rotation they are sent to the criminal branches toward the close of their elective term of six years—a situation that is psychologically bad for the Bench and for the public but fine for "the fixers" whose happy hunting ground is the Criminal Court.

How often have I heard . . . the angry expletive of this or that "fixer" who had "only asked a favor" such as granting a convicted criminal a new trial or admitting to probation a bandit or a burglar whose claim to clemency and "another chance" was that he had "a fix on through a friend of the judge's. . . . A heluva help he is to the organization" and "McKinley must be tired of the Bench—whoineell does he think elected him?" are some of the caustic comments that come from myriads of men who "made" me politically!

. . . .
Importuned to do everything unethical, unjudicial and unlawful from stopping a vice or graft grand jury inquiry to writing letters to the governor in behalf of burglars, bandits and murderers whom I myself had sentenced—I am free to admit there are many favors I myself have granted. I have admitted to bail a man charged with murder, who his friends said would die if confined longer in the County Jail—and, who did die in a week or two following his release on bond. I have admitted to probation a father of seven who turned bandit with a rusty revolver. I have brought from Pontiac to attend his mother's funeral unguarded a boy bandit. I have reduced bonds of defendants whose families and friends had scheduled their all—but not enough. I have excused jurors and have written to a governor. . . . If there is a "fixer" in Chicago or Cook County who has ever obtained the release of a professional criminal in my court or chambers, who has ever "squared a straw bond" or has "put it over" on either a grand or a petit jury through a pull with me let him speak.

Not that it is impossible to impose upon McKinley or any other judge—I have simply been fortunate in the fact that no political leader in either party . . . has ever come to my chambers to "put this over" at any cost, save in one instance— . . . asked a thing to be done which he admitted was unworthy of his position or mine.

Hundreds of others have come to prey—particularly in the course of the commercialized vice inquiries—and remained long enough to be refused; to scoff incredulously at a "stand up fellow"¹³⁶ who wouldn't stand up and depart in high dudgeon. Still, they came, breezily, boldly, slyly, shrewdly, frankly and foolishly, fearfully and arrogantly—a steady stream of "boys who could fix it with the right fellow."¹³⁷

Couple with Judge McKinley's vivid description of the political

¹³⁶In political parlance a "good judge" is a "stand up fellow" who protects his political friends and punishes their enemies.

¹³⁷*Crime and the Civic Cancer—Graft*, pp. 22, 23.

fixer system Mr. Healy's statement concerning the expediency of a judge's "going along" with conditions in the Criminal Court, and we have practically a complete picture of the effect of political fixers in the election of judges. He said:

Even a weak and supine judge will follow the lead of the vigorous prosecutor and . . . an inefficient and corrupt prosecutor will, to a large extent, carry with him, not only the weak judge, but also the judge whose chief desire is to avoid strife and contention. Opposition to the prosecutor may mean political oblivion; acquiescence on the part of the weak judge enables him not only to keep his own political fences in repair, but to extend judicial favors in the matter of sentences and paroles, knowing full well that there will be no protest by the prosecutor.¹³⁸

Judge Joseph B. David testified to the political atmosphere of the Criminal Court when he said, "The prosecutor, as well as the judge is constantly under political pressure."¹³⁹ His testimony was based on several months' experience in that tribunal and was uttered shortly after he had quashed an indictment of a high political personage in the Sanitary District case.

In connection with the description of how the clever criminal attorney utilizes clerks and prosecutors and judges to delay justice should be remembered the agreement of Judge McKinley and the Illinois Crime Survey in their findings that the usual state's attorney's staff is composed mainly of political appointees chosen for their vote-soliciting value rather than their courtroom ability or initiative; that the clerks of the Municipal Court are "all in politics, usually captains of precincts in their wards";¹⁴⁰ that other courts' employees are usually political appointees also; and that, in the words of the survey, "it is impossible for the judge not to know about queer practices in his court and if they exist, they are carried on with his tacit acquiescence".¹⁴¹ Also, "a considerable share of the responsibility for the failure of justice cannot be blamed upon 'archaic procedure,' but must be borne by the Bench personnel as well as the prosecutors," was Judge McKinley's conclusion concerning the work of the Criminal Court.¹⁴²

Waivers.—In 1928 the Chicago Crime Commission brought a proceeding to transfer Judges Eller, Kerner, and Klarkowski from the Criminal Court on the ground that they had "improperly, and for political considerations," entered orders permitting many felony waivers. Specifically, the Commission's bill charged: that the judges whose conduct is here being inquired into have wittingly, because of their political affiliation with the state's attorney as aforesaid, or unwittingly, but complacently, aided the state's attorney in the dereliction of his duty aforesaid, and have permitted their respective courts to be subjected

¹³⁸*Illinois Crime Survey*, p. 288. Mr. Healy was state's attorney of Cook County, 1904-8.

¹³⁹*Chicago Tribune*, June 11, 1931.

¹⁴⁰*Illinois Crime Survey*, p. 414.

¹⁴¹*Daily News*, October 10, 1930.

¹⁴²*Crime and the Civic Cancer—Graft*, p. 7.

to the criticism of unwarranted and improper judicial clemency, instead of asserting their right, power and authority to require a vigorous, full and complete prosecution of persons charged by the grand jury with criminal offenses.¹⁴³

These judges were shown to have entered 364 felony waivers within a given period as compared to 205 such waivers entered by the four other judges of the same tribunal. Although the Crime Commission was unable to prove its case of political influence, the newspapers reported an immediate drop in the number of waivers.¹⁴⁴

Bail bonds.—Somewhat akin to the wholesale granting of felony waivers are the abuses perpetrated in the form of granting easy bail bonds. Said the *Tribune* in an editorial apropos of a grand jury investigation of these practices:

A judge of a minor court who specializes in bail releases can do a great deal of surreptitious damage. One judge who is corrupt or entangled in vicious influences may make his court a rat hole through which a procession of criminal vermin caught momentarily in the meshes of the law passes to freedom. . . . Light should be turned upon the officials who lurk in the shadows of the half world of corrupt politics and professional criminality. It should be turned not only upon the methods by which law is evaded and defeated but upon the individuals who exercise and the officials who respond to the influences which pervert the administration of justice, civil and criminal.¹⁴⁵

Fourteen months later, after a year of study of the subject by Chief Justice John J. Sonstebj, a code of rules to curb bail bond abuses was adopted by the judges of the Municipal Court,¹⁴⁶ in the belief that a bail act passed by the General Assembly a little earlier did not apply to the Municipal Court.

Changes of venue have already been described as one of the three avenues of escape from justice, through postponement of trial, even after appeals for continuance have failed.¹⁴⁷ The *Tribune* of September 28, 1931, credited the Chicago Crime Commission with statistics indicating that two judges of the Criminal Court, Judges Philip Finnegan and John Prystalski, had made records for giving criminals no more than their just deserts, with the result that many had applied for changes of venue. The newspaper further interpreted these statistics as meaning that "a number of defendants, especially those with some semblance of pull or political power, virtually select their trial judges."

Official obstructionism.—The decision of State's Attorney Crowe in 1928 to delve into election disorders himself, at a moment when the coroner's jury had recently recommended that a special grand jury be impaneled to investigate election terrorism, was labeled by the Bar Association's president, Carl R. Latham, as "a de-

¹⁴³*Daily News*, May 15, 1928.

¹⁴⁴*Chicago Tribune*, May 8, 1928.

¹⁴⁵November 14, 1930.

¹⁴⁶*Ibid.*, February 6, 1932.

¹⁴⁷Speech of Henry Barrett Chamberlin, operating director of the Chicago Crime Commission, quoted by *Daily News*, October 27, 1931.

liberate attempt to obstruct and hinder an honest and sincere investigation of lawlessness and election crimes." Mr. Latham charged that Crowe in the past had "sought to throw obstacles in the way of those who have been active in imprisoning election crooks," and branded the state's attorney's show of effort at this time as "simply another obstruction," which "should not be considered seriously."¹⁴⁸ Incidentally, it may be noted that in petitioning Judge William V. Brothers to carry out the recommendations of the coroner's jury in regard to the creation of a special grand jury, the Bar Association was petitioning a judge who had been Republican committeeman for the city of Evanston the preceding year¹⁴⁹ and was then aligned with Prosecutor Crowe's faction of the party.

Another emphatic contrast to the indorsement of State's Attorney Crowe by the twenty-two judges who might have felt they owed their hopes of re-election to him, is supplied by the charge of Judge McKinley that the "whitewash" report of the majority of a grand jury investigating commercialized vice, in 1923, "originated" not with a member of the jury, "but with the representative of the state's attorney." He charged that "a high police official" obtained a list of the February grand jurors within an hour or two after he had charged them with continuing the vice investigation; that within twenty-four hours more there appeared casual callers at the drug stores, cigar stands, garages, drink parlors, etc., frequented by these jurors individually, to start discussions of what was "in the papers," and incidentally drop opinions that "this vice inquiry is a political frame-up," or that "it's a big town to keep clean of everything—the chief or any copper can tell you how hard it is to drive bandits and prostitutes off the street at one time." The process was afterward described to Judge McKinley as "the fanciest piece of free and easy fixing that ever fooled a jury"; but he himself summarized it also as

the boldest by far and most perfect example of a conspiracy to defeat the ends of justice, impossible of accomplishment if there had been no partnership between politics and crimes. Impossible of punishment, too, this pollution of the wells of justice in a county controlled by those who for years have throttled decency in office.¹⁵⁰

A case history.—An actual case history will serve to epitomize the ways in which politics is linked with the administration of justice and to illustrate the far-reaching ramifications of political influence. In September, 1924, one David Stark picked the pocket of William B. Austin of \$17.00. More than two years later Stark began a prison sentence, although he had been arrested and identified within ten minutes after committing the theft. As a matter

¹⁴⁸*Chicago Herald and Examiner*, May 8, 1928.

¹⁴⁹*Daily News Almanac*, 1928, p. 783.

¹⁵⁰Judge M. L. McKinley, *Crime and the Civic Cancer—Graft*, chapter on "The Fine Art of the Fixer," pp. 23-25.

of personal pride and civic interest, Mr. Austin systematically followed each development of the prosecution. When the case was first called, a continuance was asked, Stark being released on \$1,000 bail signed by a professional bondsman. At the second hearing Stark jumped the bond, although he had meanwhile personally implored Mr. Austin to drop the case. After another continuance, Stark had a preliminary hearing before Judge Finnegan and was bound over to the grand jury in bonds of \$5,000. Bonds of that amount were provided and were accepted by Judge Lawrence Jacobs. No schedule of property had been required, however, and the bondsman did not have any known residence nor was his name listed in the telephone book.

Mr. Austin took up the matter with Chief Justice Harry Olson who called for Judge Jacobs, but was told that the judge did not convene his court until 2 P.M. The clerk of Judge Jacobs' court was then summoned. In response to the question, "Who is this bondsman?" and "Why did you not take a schedule of his property?" the clerk in a loud whisper told Judge Olson that the bondsman was chief clerk of the First Division of the Appellate Court, the clerk of which was a prominent politician. The judges of that court forced Judge Jacobs' clerk to displace the bondsman.

At this stage of the case Mr. Austin was approached by the president of a prominent political club, of which he was also a member, who said, "I wish you would let up on this man Stark. A state senator has requested me to ask this favor." He said also that Stark had jumped his bond and was working at a political party headquarters in the Hotel Sherman. The club president was also chairman of the political party committee.

A deputy sheriff rearrested Stark in the political headquarters. He was again released on bail, jumped the bail when the case was called, was surrendered by the bondsman, was then placed in the county jail, but was soon released on another bond. When the case came up in court, Stark had taken a change of venue, and when it was reached on the new call, Stark had a new attorney, a member of the Illinois legislature, who could not appear because of his duties at Springfield.

The next time the case was called, the attorney was sick. The next time, the attorney was at Springfield and the case was postponed for two weeks. It was again postponed for the same reason. The next time, the attorney presented an affidavit that the defendant's wife had died, and that he had taken her body to New York. But Stark was found to be unmarried.

At the end of two weeks more the defendant's attorney appeared in court with two telegrams reporting that the defendant was sick in New York. The defendant's bonds were forfeited, and new bonds were set at \$15,000 in case he was recaptured.

Through Mr. Austin's efforts, Stark was apprehended in New York after a lapse of four months, and was returned to Chicago. The bond was now raised to \$50,000.

When the case finally came to hearing, the trial lasted two days. Stark was convicted and sentenced to Joliet. The defense attorney immediately filed a motion for a new trial. When this was overruled, the defense sought a writ of supersedeas in the Supreme Court, but this motion too was finally overruled.

Altogether this defendant achieved nine continuances, two changes of venue, and three bond forfeitures. During the pendency of the case there appeared before Mr. Austin in behalf of the defendant, whose guilt was unquestioned, two state senators, a member of the lower house (the defendant's attorney, who later was a Democratic candidate for judge of the Municipal Court), a chief clerk of the Appellate Court, two deputy clerks of the Municipal Court, the club president and party committee chairman, and six other citizens of more or less prominence, all of whom urged Mr. Austin to drop the case. In addition, Mr. Austin's principal witness, a youth of fifteen years, was threatened with kidnaping by gangsters, resulting in policemen being assigned to guard the home.¹⁵¹

The Sanitary District case.—Another case illustrating the operation of the self-protective mechanism of spoils politics is the prosecution of the former officers of the Sanitary District of Chicago during the period 1929-33. The "high points" of the case are listed in Table LIII. The case was highly "political" for the reason that the defendants were prominent members of their respective political factions, and that the charges against them were in essence that they had used their public positions to exploit the public pay-rolls and public treasury for the benefit of political appointees. The political prominence of the defendants is indicated by the fact that the chief of the accused had acted for many years as secretary of the Central Committee of the Cook County Democratic organization, and for many years had represented a city ward on that committee. Even after conviction he was re-elected to this party post, and continued in that capacity until his death in 1933.

The substance of the allegations against the trustees was that at least two thousand persons, real or fictitious, many of whom did no work to earn the substantial salaries paid to them out of the public treasury, have been placed upon the pay-rolls of said Sanitary District by said Trustees during the year 1928 solely for political purposes.¹⁵² "A conspiracy involving active wrongdoing or palpable omission of duty" was also charged.

The political character of the alleged conspiracy was confirmed

¹⁵¹Information from manuscript in the writer's possession.

¹⁵²*Citizens' Association of Chicago Bulletin* No. 77, January 18, 1929, p. 3.

by an independent investigation conducted by the Chicago Bar Association, which declared:

It was stated frankly enough before the Committee that the Sanitary District has for years been a political dumping ground, and that numerous employees of the Law, as well as other Departments, have been given jobs, not because of any need for them, but because of a desire to give them a reward for some political service, or as a favor to some political boss, big or little, who sponsored their appointment. The line of communication between the political bosses of different parties and different factions and the treasury of the Sanitary District was only too evident. Nearly all of the lawyers who appeared before the Committee stated that they got their appointments through the influence and nomination of some ward committeeman or other politician.

Political debauchery in the Sanitary District has of late gone to unprecedented lengths. The spoils system thus built up has caught in its meshes lawyers who, in the first instance, may have been innocent of any intentional wrongdoing. Some sought and obtained jobs, perhaps in good faith, expecting to render service, but failed to resign when month after month they found no work of any consequence assigned to them. They continued to draw their semi-monthly pay-checks when they must have known that these checks were absurdly out of proportion to any work performed. In many instances the recipients must have suspected from the first that there was something irregular about their employment. Many of them had previously given all, or practically all, of their time and their best efforts to the work of other public offices for a much smaller salary than they were receiving at the Sanitary District for only "part-time"—and often a very *small* part at that—and they must have realized that they were being paid for something other than for an honest day's work. The only discussion that some of these men had concerning the salaries they were to receive was with the ward committeeman who announced that he had a job at the Sanitary District paying so many dollars per year which he could bestow on some ward worker. . . . Information furnished the Committee disclosed the closest kind of a working alliance between the bosses of the different political parties and factions. Democratic bosses procured from Republican trustees numerous jobs for Democratic workers, and Republican bosses obtained political jobs for Republican workers and Democratic trustees. Apparently no thought was given to the public interest, no attempt was made to protect the public treasury, in this wild scramble for spoils. It is a striking example of the evils of political manipulation of public office for personal ends, and well illustrates the betrayal of public trust which invariably occurs when the people elect spoilsmen to office.¹⁵³

The workings of the self-protective mechanism of politics appears in the resistance of the accused trustees to removal from office and to criminal prosecution, and to incarceration after conviction. In a memorandum kindly furnished to the writer, Mr. John E. Northup, who as First Assistant State's Attorney had entire charge of the prosecution, states that

The first set of indictments, which were returned on May 23, 1929, were never tried. These were returned when Mr. Frank J. Loesch had charge of the investigation. Thereupon Mr. Loesch and his assistants retired from the State's Attorney's office and Judge Swanson, shortly thereafter, prevailed on me to take charge of the entire matter.

The first indictments were the result of a rather hurried investigation, and included many more defendants than I felt it was advisable to prosecute, many

¹⁵³Chicago Bar Association. Committee on Public Law Offices, *Report*, April 4, 1929, pp. 13, 14.

of them of minor importance. I decided upon a more thorough investigation, and we called several hundred witnesses during the year 1929 and the early part of 1930. The matter was presented to a special grand jury in May of 1930, with the result that all the trustees were re-indicted, also Edward J. Kelly, Chief Engineer of the District; Timothy L. Connolly, Purchasing Agent; John T. Miller in charge of maintenance and operation and Martin Edelstein, who occupied a responsible position.

This indictment charged a conspiracy to defraud the Sanitary District out of five million dollars by fraudulent padding of the payrolls, construction of the cinder path, installation of the electric lighting system along McCormack Boulevard and grossly exorbitant contracts for construction work on sewerage disposal plants.

In the Fall, after vacation, I moved to have the case set for trial and it was assigned to Judge Charles A. Williams. He indicated that he would not try it until after he had spent his winter vacation in California, which would delay the trial until spring. He refused to reassign it on that ground, after which I discovered that his son had been on the payroll for two years, during 1927 and 1928, without having performed any work, and that the Judge knew of the fact. I set this up on the basis of Rule 15 then in effect, and finally obtained a reassignment of the case, Judge David being selected at that time.

Practically the whole of January, 1931, was spend in arguing the motion to quash the indictment. Judge David deferred his ruling until June 2, 1931, when he quashed several counts, particularly those involving Mr. Kelly. Thereupon I procured a nolle of the remaining counts, presenting the evidence to the grand jury with a view of obtaining a re-indictment of old defendants, but failed as to Mr. Kelly, who was no-billed by the grand jury. It was this indictment which came before Judge Fisher in the fall of 1931, and which he chose to assign to himself, thereafter calling in Judges Prystalski and Kelly to help bear the load.

Rule 15 was rescinded by a round robin circulated and signed by the Judges of the Circuit and Superior Courts. Since a majority of the judges was obtained, I understand it was not presented to the rest. I was unaware of the situation when I sought, by invoking the rule, to have the case assigned to some other judge than Judge Fisher.

Under our practice and court decisions, defendants had never been permitted to waive juries for offenses carrying penitentiary sentences prior to the beginning of this investigation. After the beginning of the investigation, however, a test case was made on such a waiver and the Supreme Court held that defendants in all cases might waive jury trial. Thereupon, we prosecuted another test case to the Supreme Court and procured a modification of the rule, permitting the State's Attorney or the court to bar the waiver of a jury. This opinion, however, did not come down until after I had been trying the Sanitary District case for about two weeks, and we were, of course, precluded from a jury trial.

It is enlightening to supplement the foregoing account with day-by-day reports of the case in the daily press. In a hearing before Judge Charles A. Williams December 1, 1930, Mr. Northup is reported to have said:

I am not going to try this case before any judge who was sponsored directly by the officials of the sanitary district, or any judge whose relatives or friends had anything to do with that mess down there, when there are perhaps twenty others on the Bench who would not be open to any such objection.¹⁵⁴

¹⁵⁴*Chicago Daily News*, December 1, 1930.

Continuing, Mr. Northup declared:

We all know the power of these gentlemen. They have made judges, independently, one or two of them, but when they join themselves together they can make or break judges, and I will not try the case before any judge they made or who can be broken by them.¹⁵⁵

Judge Williams is reported to have replied to Mr. Northup: "You picked me here, and I am up against this proposition here."¹⁵⁶ Mr. Northup is not going to intimidate me by any action on the grand jury. My son may have collected seven or eight months' pay from the Sanitary District, but that is not as much as Mr. Northup has collected from Cook County during the last twenty-five years.¹⁵⁷

Judge Williams retired from the case on December 10, 1930. The case was then reassigned to Judge Joseph B. David. On June 2, 1931, Judge David quashed three of the nine counts in the original indictment which was first returned May 3, 1929.¹⁵⁸ Two days later Prosecutor Northup nolle prossed all of the original indictments and on June 5 the grand jury voted a new indictment which eventually came to trial. The new bill included all of the original defendants, excepting Edward J. Kelly.

On June 26, 1931, at the annual meeting of the judges of the Circuit and Superior Court, Judge Harry M. Fisher was elected Chief Justice of the Criminal Court for the term of 1931-32. He entered upon his duties September 7, 1931.

The case remained before Judge David until October, 1931, when he granted the prosecutor's request for a change of venue.

On the eve of the reassignment of the case, Prosecutor Northup did an unusual thing. He issued a statement urging any judge who was a political or personal friend of the defendants to refuse to hear the case. He said:

The last judge [Judge David] to whom the sanitary district cases were assigned refused to hear them by reason of the fact that the defendants had been friends of the court for many years and that the responsibility was too great to be shouldered by such a judge. In this connection he said some judge must be found who had not been associated with the defendants as he had been. . . . The state feels and will insist that any judge associated with the defendants, as above noted, should refuse, as Judge David indicated he would do, and not undertake the trial of this case. Certainly the public is entitled to nothing less than this.¹⁵⁹

¹⁵⁵*Ibid.*

¹⁵⁶*Chicago Tribune*, December 2, 1930.

¹⁵⁷Cited in the *Chicago Herald and Examiner* editorial of December 8, 1930, entitled, "Think It Over, Judge."

¹⁵⁸Reporting this ruling, the *Chicago Tribune* of June 3, 1931, p. 3, said: "Judge David's decision is considered by lawyers as really affecting only one defendant, Edward J. Kelly (Chief Engineer of the Sanitary District) who is also president of the South Park Board. Judge David ruled that the acts charged do not constitute a crime. It was admitted at the state's attorney's office that the 7th, 8th and 9th counts, which were quashed, were aimed directly at Kelly, although all defendants were named together in them."

¹⁵⁹*Chicago Daily Tribune*, October 15, 1931.

Prosecutor Northup flatly alleged, furthermore, that the defendants and their associates "high in political life" had made agreements designed to wreck the prosecution of the case. His statement continued:

I have very reliable information that shortly before the sanitary district case was transferred by Judge David to the chief justice of the Criminal Court some very remarkable conferences were held between certain of the defendants and their associates high in political life. At some of these conferences astounding agreements were made and guaranties were given that very definite results were to be forthcoming within a period of thirty days. If the wreckage proposed by the agreements and guaranties in question shall ever occur, it may be well for certain gentlemen to reflect as to whether they will ever be extricated from its sordid toils. From some observation of wrecking operations, I will say that this constitutes as huge and risky an undertaking as anyone ever should-¹⁰⁰ered.

Mr. Northup amplified his charges thus:

A panicky state of mind on the part of several defendants shortly before the case was sent back to the chief justice by Judge David led them to demand from their friends absolute assurances. These same men now profess confidence that they are in no danger from the prosecution of the case.¹⁰¹

"Corrupt politicians and grafters in public office are determined to protect the defendants and prevent their trial. The Chicago public is deeply interested in the outcome," commented the *Chicago Daily News* editorially, adding that "not only the indicted trustees but the judicial system of Cook county are on trial."¹⁰²

On October 15, Chief Justice Harry M. Fisher assigned the case to himself, announcing that it would remain on his call and would be subject to trial immediately, "unless the defendants ask for a jury trial." Judge Fisher had charge of the non-jury cases.

Prior to Judge Fisher's announcement that he would hear the case, the following colloquy took place in open court between Judge Fisher and Prosecutor Northup concerning Mr. Northup's public statement already cited:

The Court—"Why, Mr. Northup, wasn't that brought to the attention of the court instead of the press?"

Northup—"I had very good reason for not bringing it to the attention of the court. I did not see that I could get any relief if the court could give any relief in the matter. And I would not have anticipated any relief whatever from the court on that matter."

The Court—"If there is a plot, then of course it is contempt of court."

Northup—"If there is a plot it should be investigated by the grand jury, and I am willing to have the grand jury investigate it."

The Court—"Why, then, didn't you present it to the grand jury instead of going to the press when there is a case pending?"

Northup—"I took it as a case in which there is tremendous public interest and a case in which I am charged with the responsibility of its presentation in court."

¹⁰⁰*Chicago Daily News*, October 13, 1931—"Northup again charges 'Fix' in 'Whoopie' Trial."

¹⁰¹*Chicago Tribune*, October 13, 1931.

¹⁰²*Chicago Daily News*, October 14, 1931.

The Court—"Do you think that you have a perfect right to try your case in the press?"

Northup—"I was not trying the case in the press."

The Court—"Or to intimidate the court?"

Northup—"No, I was not trying to intimidate the court. I was simply trying to get a fair trial and nothing more."

The Court—"What about the statement this morning?"

Northup—"What about it? I know what it is. What part of it do you refer to? I will answer you."

The Court—"Did you make a statement that judges under any circumstances should refuse to undertake the trial of this case?"

Northup replied that he had made such a statement, with certain modifying stipulations.

Illustrating his point, he said: "Last January, when this case was assigned to Judge David, we went into chambers and I said: 'I think your political connections are such you ought not to sit in this case. You ought to refuse, withdraw from it.' He said his relations with the defendants were no different than those of the other judges on the Bench.

"Nine months later he said: 'I have been acquainted with these men around twenty-five years and it would be a miscarriage of justice practically for me to hear the case.' That is what I had in mind."

The Court—"Was any judge present at any of the meetings that you speak of?"

Northup—"Not that I know of."

The Court—"Did any judge in any way to your knowledge participate in these things?"

Northup—"Judges don't have to participate in these things."

The Court—"Answer my question."

Northup—"In so far as I can, but they do not have to participate in that kind of meeting, and the meetings are the same when they do not participate in them."

The Court—"Have you any information that any judge of this court has in any way given out any hope or promise in connection with this?"

Northup—"Only what I have heard, and I am willing to have that matter aired out before the grand jury. And I will produce witnesses there, a number of them."

The Court—"What is it that you heard?"

Northup—"I heard this case was not to get a fair trial, for one thing."

The Court—"That is not my question."

Northup—"And I heard that certain of the defendants—"

The Court—"Whether you heard any, whether you know of any, judge of the Circuit or Superior Court—"

Northup—"I could not have heard of any judge as the case has not yet been assigned and nobody knew to what judge it would be assigned. I could not have heard that, but I did hear when the case was assigned that the defendants were given assurances they could rely upon the manipulations going on for their future safety."

The Court—"Assurances from any judge?"

Northup—"No, no assurances from any judge."

The Court—"Or from any judges?"

Northup—"No sir. I perhaps may qualify that. There were certain statements referred to me and told me. I did not refer to them in these articles in which a judge's name was mentioned."¹⁰³

¹⁰³*Chicago Daily News*, October 15, 1931.

Following Judge Fisher's assignment of the case to his own court, Mr. Northup at first declined to proceed with the case before him, for the reason that a year previous the defendants' counsel had suggested to the state's attorney's office that Judge Fisher try the case. Mr. Northup asserted that they mentioned no other judge.¹⁶⁴

After the hearing, Mr. Northup made public the following statement:

The retention of the sanitary district cases on his own [Judge Fisher's] trial call and his setting of the case before himself for a hearing next Wednesday fulfills many a prophecy recently made to me. I prophesied otherwise, but proved to be the poorer prophet.

About a year ago the counsel for the defendants called on me, following the suggestion of the then Chief Justice McGoorty that we confer on a judge to try the case. The only man they suggested to try the case was Judge Fisher, to whom I objected. They then observed: "But suppose the chief justice assigns it to him. How can you help yourself?"

I replied that I thought I could find a way to avoid this. The effort was made to assign the case to Judge Fisher, and all but succeeded, but I finally prevented it.

This year Judge Fisher himself became chief justice of the Criminal Court, and he has now assigned the case to himself. While I have refused to try the case before Judge Fisher, I will remain in the office and will, as requested by State's Attorney Swanson, assist to the utmost the men who will appear in court. After what took place last year with reference to the assignment of the case, and what has recently happened, I do not wish to assume the responsibility of presenting this particular case where it now stands.¹⁶⁵

Despite his earlier announcement that he would retire from the case, Mr. Northup remained and carried the prosecution to a successful conclusion. He was unsuccessful a few days later in attempting to induce Judge Fisher to grant a change of venue on the ground that Judge Fisher was prejudiced. On October 27, Judge Fisher denied Mr. Northup's motion for leave to file a certificate of objection on the ground of prejudice. The denial was based on the reported change in Rule 15 of the Criminal Court, as amended March 23, 1931, denying to the state's attorney the change of venue on the ground of prejudice. In denying the motion, Judge Fisher is reported to have said, "If I felt inclined to send the case to another court, it could not now be done with any degree of self-respect. It would be a cowardly yielding to pressure."¹⁶⁶

Judge Fisher decided, however, to have Judges John Prystalski and Joseph J. Kelly associated with him in the case, although there is no legal provision in Illinois for a banc of judges to hear a criminal trial.

Arguments proceeded before Judge Fisher and his advisers, and

¹⁶⁴*Ibid.*, October 17, 1931.

¹⁶⁵*Chicago Daily Tribune*, October 16, 1931.

¹⁶⁶*Chicago Daily News*, October 27, 1931.

on November 25 Judge Fisher upheld three of the ten counts of the indictment and ordered the trial to proceed on December 6, which it did continuously until February 5, 1932, when Judge Fisher, with the concurrence of his associates, found four of the defendants guilty of conspiracy as alleged.

Although this case resulted in the conviction of only a few of the political leaders involved, this fact in itself would not sustain the contention that political influences were at work not only to delay justice but to defeat it. It should be noticed that none of Mr. Northup's allegations of political interference have been denied. Nor was action taken at any point, either by contempt proceedings or by bringing the matter before a grand jury for investigation. Such action would or should have been taken if so outspoken a comment did not have basis in fact. It is to be noticed that in the colloquy of October 15 Mr. Northup was willing to submit his evidence of political interference to a grand jury, and also to have the hinted action of contempt against him "for trying the case in the newspapers" taken at any time. Judge Fisher declined to have the matter taken up by the grand jury and did not hold Mr. Northup in contempt. Another bit of uncontradicted testimony that tends to confirm the contention of political influence was Mr. Northup's statement a year later that he was offered the assurance of election to a judicial post if he would agree to compromise the prosecution of the case.¹⁶⁷

The possibility of delay in executing the judgment of the court is seen in the subsequent history of the case. The verdict was first appealed to the Appellate Court. Eight or more extensions of time were allowed to the defense for perfecting its record for appeal. The result was that more than sixteen months elapsed before the case finally came before the Appellate tribunal, on June 10, 1933. Further delay was involved in the fact that several months are required for the case to be considered by the Appellate Bench. Additional delay could then be effected if the Appellate judges ruled against the defense, taking a further appeal to the Illinois Supreme Court.¹⁶⁸

¹⁶⁷*Chicago Times*, March 29, 1932. The dispatch said: "Decatur, Ill., March 29 (AP). John E. Northup, republican candidate for attorney general declared here that political pressure was brought by friends of the defendants in an attempt to prevent prosecution in the recent sanitary district case in Chicago. 'It was proposed that if I would withdraw from the case, certain leaders in both major political parties would combine to secure me a place in the Superior Court Bench in Cook County,' he said. He did not reveal the identity of the men he said made the offer, but declared they were 'politically powerful.'"

¹⁶⁸Commenting upon the repeated extensions of time allowed in this case the *Chicago Tribune*, January 12, 1933, said: "Courts are altogether too complacent and grant postponements too readily. It is an unfortunate manifestation of the fraternity of the law and of the desire of elected judges not to offend."

In the history of this case we see "political influence" in the following circumstances:

1. Delay in bringing the case to trial.
2. Assigning a judge to hear it who was politically and personally obligated to the defendants.
3. The mysterious changing of Rule 15, denying the state's attorney the right to file a certificate of prejudice as a basis for a change of venue.
4. The assignment of the case to a judge who first quashed counts in the indictment, thereby releasing one of the politically prominent defendants, and then the same judge refusing to hear the case after sitting on it for several months on the ground that he was biased by his personal and political friendship with the defendants.
5. A "set up" to wreck the case by which the defendants agreed not to take a jury trial with a view to having the case come before a judge prominent politically who would hear it. This "set up" was offset by the prosecutor "trying the case in the newspapers"

TABLE LIII

THE SANITARY DISTRICT CASE

A. CHRONOLOGY OF INVESTIGATION AND PROSECUTIONS

Nov. 1928	Pay-roll irregularities disclosed.
12-26-28	Citizens' Association petitions State's Attorney Swanson for action.
5-3-29	First indictments returned.
4-4-29	Chicago Bar Association's Public Law Office Committee files report recommending disbarment proceedings against law staff.
5-28-29	Ouster of Sanitary District trustees on <i>quo warranto</i> proceedings denied; basis of suit: failure to file annual reports on time.
12-1-30	Case first called to trial. Allegation that Judge C. A. Williams was disqualified to sit on case on ground that his son had been employed in the district.
12-10-30	Judge Williams retires from the case. Case reassigned to Judge Joseph B. David.
3-23-31	Rule 15 of Criminal Court Code amended to prevent prosecutor from filing a certificate of prejudice to obtain reassignment of case.
6-2-31	Judge David quashes three of nine counts in the indictments, releasing E. J. Kelly, chief engineer.
6-4-31	Prosecutor Northup nolle prossed all of the original indictments.
6-5-31	New indictments voted.
6-26-31	Judge Harry M. Fisher elected chief justice of the Criminal Court.
9-7-31	Judge Fisher assumes office of chief justice.
10-13-31	Northup "charges political effort to ruin prosecution."
10-14-31	Judge Fisher announces he will name judge to hear case.
10-15-31	Judge Fisher assigns Sanitary District case to his own court.
10-16-31	Northup "quits" case and charges political set-up.
10-21-31	Defense charges the <i>Chicago Daily News</i> as being in contempt of court.
10-27-31	Judge Fisher refuses change of venue.
10-28-31	Defense argues for quashing of indictments.
11-14-31	Prosecution files bill of particulars.
11-25-31	Judge Fisher upholds 3 of the 10 counts in the indictment; announces Judges Kelly and Prystalski will sit <i>en banc</i> on case.
12-7-31	Trial begins.
2-5-32	Convictions announced.

TABLE LIII—*Continued*

- 3-29-32 Northup, in campaign for Republican nomination for attorney general, announces he was offered Superior Court judgeship if he would withdraw from the case.
 Judge Fisher grants new trial to Martin Edelstein. The case was then nolle prossed. Edelstein was the former real estate agent of the District, who was originally sentenced to 6 months in the Bridewell and fined \$2,000. Edelstein was a relative of Moe Rosenberg.
- 6-10-33 After 16 months and 8 specific extensions, appeal from the conviction of 2-5-32 is filed in Appellate Court.
- 8-29-33 Timothy J. Crowe, convicted former president of the District, dies.
- 5-1-34 Indictment dismissed against Timothy L. Connelley, fugitive former purchasing agent, last of those indicted. Reason: witnesses gone; evidence missing; case a "hold-over" from previous administration.

B. SEQUEL OF THE INDICTMENTS

In the original indictments, returned May 3, 1929, the following defendants were involved:

Trustees

Timothy J. Crowe (Democrat), president and trustee
 James Whalen (Democrat)
 J. J. Touhy (Democrat)
 John K. Lawler (Republican)
 August W. Miller (Republican)
 Frank J. Link (Republican)
 Lawrence King (Republican)

Employees

Edward J. Kelly, chief engineer
 John T. Miller, former assistant superintendent of permanent plants and structures
 Martin Edelstein, former head of the real estate department
 Timothy L. Connelley, former purchasing agent

When the trial was concluded, February 5, 1932, the status of the above defendants was as follows:

Edward J. Kelly's indictment had been quashed and he was not reindicted.
 Lawrence King died November 4, 1929, before the trial started.
 John K. Touhy, James Whalen, and August W. Miller were acquitted.
 Timothy J. Crowe and Frank J. Link were found guilty and were ordered to serve maximum sentences of one to five years in the penitentiary.
 John T. Miller was sentenced to serve six months in the House of Correction and to pay a fine of \$2,000 and the costs of the trial.
 Martin Edelstein was sentenced to serve three months in the House of Correction and to pay a fine and the costs of the trial.
 Timothy L. Connelley was not tried with the others owing to the fact that he was a fugitive from justice and was returned to the jurisdiction of the court only during the course of the trial. On April 30, 1934, the case against Connelley was nolle prossed.

The foregoing sentences eventuated as follows:

Timothy J. Crowe died August 29, 1933, while the case was on appeal; Martin Edelstein's sentence was set aside; John T. Miller and Frank J. Link's cases were appealed.

Thus of the eleven defendants originally indicted,
 Three were acquitted;

One escaped trial;

Two died before or during the trial;

One died after conviction, but while the case was on appeal;

One escaped trial by fleeing the state and by having the case against him "dropped" later;

One escaped the penalty after conviction, when his conviction was set aside; and
 Only two defendants remained when the case reached appeal.

and by a vigorous prosecution, which built up an unanswerable case against the convicted defendants.

6. The plot to "call off" the prosecutor by offering to place him on the Superior Court Bench.

7. The setting aside of the conviction of one of the convicted defendants.

8. The repeated extensions of time allowed the defense to perfect their appeal.

The aphorism that "justice delayed, is justice denied" finds ample fulfilment in this case, thanks to "political contacts" and an archaic criminal procedure.

Comparison of the party organizations and the Bar Association: a summary.—1. The most striking comparison is the difference in the organization of the two agencies. The Bar Association is a professional group with no district organization. Its strength lies in the individual and collective prestige of its members. The party organizations, on the other hand, are highly organized on a ward and precinct basis and operate continuously.

2. Different ideas motivate the two agencies. The Bar Association endeavors to exclude personal considerations such as location, nationality, and religion, and to consider such nonpartisan factors as professional training, personal aptitude, and public service, which tend to qualify a candidate to hold judicial office. At the same time the political parties appear to regard such qualifications only as incidental to many other elements of political strength which have little relation to judicial capacity.

3. The two agencies conduct opposite types of campaigns.

The party organizations dominate the process of judicial selection because of their "inside footholds," their unofficial contact with every phase of public business, and their ability to control every phase of the governmental mechanism. This control is exercised without the constant publicity which is counted upon ordinarily to safeguard the public interest. The relationship of the party organizations to the public is so attenuated that before a group loses public favor it can perform numerous specific acts against the public interest. Custom theoretically proscribes many political practices as unethical, undignified, etc., but a party organization seldom hesitates to employ any practice necessary to win.

4. Another point of contrast is the relative mobility of the two bodies. Political organizations are so pyramided that policies are dictated by a small group of leaders who confer constantly and may decide upon a tactical stroke in time to make the next edition of the afternoon papers. The Bar Association, on the other hand, proceeds on the basis of having all matters of major policy authorized by the members through referenda.

PART VI

IMPROVING JUDICIAL SELECTION
IN CHICAGO

CHAPTER XXIV

DESIRABLE ELEMENTS IN A SELECTIVE SYSTEM

Assuming that some improvement is possible in any existing system of selection, what elements are desirable in such a plan?

The many proposals for bettering the selective process may be conveniently grouped under four broad headings, and we may adopt them as starting-points in considering this phase of the question, as follows: (1) the caliber of candidates; (2) legal qualifications for judicial office; (3) professionalizing judicial office; and (4) taking the courts out of politics.

1. THE CALIBER OF CANDIDATES

The recognition of legal learning and experience as a desirable element in judicial fitness was a measurable advance from courts over which laymen presided. The principle that a judge should be a full-fledged member of the licensed Bar is recognized in Illinois custom, if not in its basic law. To the persistent unofficial insistence of the organized Bar these advances must be credited, for it is the only agency constantly active to counteract the inherently degrading effects of Illinois' politically controlled, elective system of judicial selection.

Standards of admission to the Bar.—The Bar's unofficial influence upon standards of admission to its ranks directs attention to an indirect, but effective method of raising the caliber of judicial candidates. For, since candidates are recruited from the Bar, the level of the Bar will determine the level of the Bench. In Illinois the Supreme Court has long controlled admission to the Bar, and the standards of qualifications required of applicants have been fixed as discretionary rules of the court. With authority thus centered the standards have become matters of judicial, rather than political-legislative, determination. The court has been open to suggestion from the organized Bar. The present high standards that prevail in Illinois may be attributed largely to the constant agitation within the profession. Evidence of this effort appears in resolutions of Bar associations and particularly in the standards formulated and advocated by the American Bar Association.

How Illinois' requirements for admission compare with those of three selected industrial commonwealths, with its neighboring states, and with the American Bar Association's standards is disclosed in Table LIV. In general it can be said that Illinois equals or nearly approximates the highest standards among the states. It is notably superior to its adjacent states, except Wisconsin, which is practically identical with Illinois.

TABLE LIV
MINIMUM REQUIREMENTS FOR ADMISSION TO BAR IN ILLINOIS COMPARED WITH SELECTED STATES*

State	Minimum Amount of Education	Outside a Law School	Duration of Law Study Partly in Law School	Wholly in Law School	System of Examination
Illinois.....	2 years college or state university examination	4 years.....	4 years.....	3 years.....	Central Board
<i>Industrial states</i> Massachusetts.....	2 years college or equivalent.....	3 years Registration.....	3 to 4 years.....	3 years full-time daytime; 4 years evening.....	Central Board
New York.....	2 years college or examination.....	4 years for college graduates Registration.....	4 years for college graduates.....	3 years for college graduates.....	Central Board
Pennsylvania.....	Degree from approved colleges or college entrance board examinations.....	4 years full-time office only.....	3 years full-time or 4 years part-time, including 6 months law office work.....	Not permitted.....	Central Board
<i>States adjacent to Illinois</i> Indiana.....	None.....	No rule.....	No rule.....	No rule.....	Central Board
Iowa.....	Equivalent of high school.....	3 years office only. Registration.....	3 years.....	3 years.....	Central Board
Kentucky.....	Equivalent of high school.....	Not permitted.....	No credit for office work.....	2 years.....	Central Board
Missouri.....	2 years college or equivalent.....	3 years office only. Registration.....	3-4 years.....	3 years daytime; 4 years evening.....	Central Board
Wisconsin.....	2 years college or examination.....	4 years office only. Registration.....	4 years.....	3 years full-time; 4 years part-time.....	Central Board
American Bar Association standards.....	2 years study in a college.....	Not permitted.....	At least law school study recommended in next column.....	At least 3 years full-time law school or equivalent if part-time.....	Examination by a public authority

* *Annual Review of Legal Education, 1934*, pp. 36-37 (Carnegie Foundation for Advancement of Teaching).

Since judicial candidates tend increasingly to be drawn from local law schools, it is pertinent to call attention also to the extent to which the local institutions meet two rough appraisal standards of training—membership in the American Association of Law Schools and certification by the Council on Legal Education of the American Bar Association. Table LV presents this comparison.

Out of 67 candidates in the judicial primary election in April, 1934, 35, or 52 per cent, had been graduated from law schools which had met these two standards. Twenty-seven of this number were from local institutions. Of the 59 candidates who had studied in local institutions, only 11 were from full-time schools. Twenty-seven, however, had studied in up-to-standard schools and 32 had received their legal education in part-time, evening schools.

The principal advance in raising the standards of the Bar through improved facilities for legal education has been made as a result of action taken in 1921 by the American Bar Association. It adopted a desirable standard of legal education; it empowered the Council on Legal Education to publish the names of law schools which approximate that standard; and by calling at Washington, D.C., February 23-24, 1922, a conference on legal education, it stirred up widespread discussion of instructional minima and requirements for admission to the profession.¹ By 1927 eleven state associations had indorsed the standards laid down by the national body. That the action taken in 1921 had stimulated progress in the direction of the standards recommended was expressed by A. Z. Reed in these words:

The circumstance that, seven years after the adoption of the original [A.B.A.] resolutions, no state can fairly be said to approximate these standards as a whole, should not obscure the great service that this Association has rendered in bringing forward these matters for discussion, and in stimulating an advance—if not to the precise goal—at least in the direction recommended.²

With definite goals of legal education thus established, the Bars of Chicago and Illinois have definite objectives toward which to exert their influence and advance the quality of legal instruction and the standards of admission to the profession. At the same time, they will automatically improve the caliber of candidates available for the Bench.

2. LEGAL QUALIFICATIONS FOR JUDICIAL OFFICE

A channel through which definite progress can be made in raising the caliber of the Bench is by establishing minimum requirements in the law for judicial candidates. Chicago has already made some progress in this direction, but long strides must be taken before Cook County and the rest of the state can overtake other commonwealths in this respect.

¹See Address by Silas H. Strawn before the Florida Bar Association, April 8, 1927, pp. 9, 10.

²*Annual Review of Legal Education*, 1928, p. 12.

TABLE LV
ILLINOIS LAW SCHOOLS*

Name	Attendance	College Years Required for Entrance	Class Sessions †	Length of Course	Member American Assn. Law Schools	Certified by the Council on Legal Education, A.B.A.	Graduates Represented in April, 1934, Judicial Primary
<i>Illinois Institutions</i>							
Full-time schools:							
University of Chicago†	345	2 or 3	M	3 or 4	Yes	Yes	4
Northwestern University	264	3	M	3 or 4	Yes	Yes	6
University of Illinois	301	3	M	3	Yes	Yes	1
Part-time and mixed schools:							
DePaul University							
Day course.....	417	2	M	3	Yes	Yes	13
Evening course.....	233	2	E	4			
Loyola University							
Day course.....	98	2	M	3	Yes	Yes	3
Evening course.....	174	2	E	4			
Chicago-Kent College of Law.....	613	2	A	3	No	No	14
Chicago Law School.....	160	2	A	3	No	No	4
John Marshall Law School.....							
Union College of Law.....	530	2	E	3	No	No	7
Webster College (<i>Discontinued</i>)	12	2	E	3	No	No	1
Hamilton College (<i>Discontinued</i>)							2
Office.....							2
<i>Outside Illinois</i>							1
University of Michigan.....	539	3	M	3	Yes	Yes	3
Detroit College of Law.....	496	2	A	4	No	No	1
Notre Dame University.....	123	3	M	3	Yes	Yes	1
Georgetown University.....	518	2	M	3	Yes	Yes	1
Washington University.....	145	2	A	4			
Washington University.....			M	3	Yes	Yes	1
Total.....							65

*Annual Review of Legal Education, 1934, pp. 46-47 (Carnegie Foundation).

†Symbols for denoting type of work: M indicates that classroom sessions pre-empt the best working hours of the day; A denotes late afternoon, early morning, or a very few weekly day-time hours; E characterizes evening classes.

‡The work of the first law school year at the University of Chicago is non-professional, partly prescribed. Students registered for this year are not included in the reported attendance figures.

The judiciary is the only group of major elective offices for which progress has been made in requiring special qualifications other than age or citizenship. The early prejudice against lawyers and courts found expression in the omission in many states of any professional qualifications for judges of even the highest tribunals.³ Under existing requirements in Illinois, even now, a layman may be elected a judge of any state court, if he meets the tests of age and citizenship laid down in the constitution of 1870. So far as is known, however, no person who had not been admitted to the Bar has ever been elected to the courts of Cook County.

The trend of sentiment is shown by the requirements for candidacy established for the Municipal Court in 1905. To the tests of age and residence was added the requirement that the judge must have practiced law for at least five years. This requirement was later extended to eight years.⁴ Since only duly licensed attorneys may practice, the requirement indirectly established the same qualifications of educational training for the Municipal Court as for admission to the Illinois Bar.

A comparison of the present qualifications in Illinois and other commonwealths for judges of the various benches is presented in Table LVI.

In the proposed Illinois constitution of 1922, higher age and professional qualifications were provided for all state courts than are required under the constitution of 1870. The age qualification for justices of the Supreme Court was increased from thirty to thirty-five years, and the same requirement was made for judges of the Appellate and Circuit courts. In the case of County judges the age was raised from twenty-five to thirty years. More noteworthy, however, was the provision requiring judges of the Supreme, Appellate, and Circuit courts to have been licensed to practice law in the state for ten years and to have been actively engaged in such practice or to have acted as judicial officers or both. For County judges a five-year period was similarly provided.⁵ Had the constitution been adopted, these requirements would have placed Illinois on a par with other commonwealths. The fact that a professional test for elective office was included in the proposed constitution indicates the marked change which has occurred since 1870 in the professional qualifications deemed desirable in a judge.

"At the time of the Revolution it was beginning to be thought advisable to have judges learned in the law. But many states relied upon judges without legal training until well into the nineteenth century. Thus, two of the three justices in New Hampshire after the Revolution were laymen, and the Chief Justice of Rhode Island from 1819 to 1826 was a farmer." (Roscoe Pound, *Criminal Justice in Cleveland*, p. 599).

³See p. 123.

⁵Proposed Illinois Constitution of 1922, sec. 124.

TABLE LVI
QUALIFICATIONS OF RESIDENCE, AGE, AND PROFESSIONAL TRAINING REQUIRED FOR JUDICIAL CANDIDACY
IN VARIOUS STATES

IN VARIOUS STATES

No.	States	Residence in State		Age		Professional*		Length of Bar Experience
		Supreme	Circuit	Supreme	Circuit	Admitted to Bar		
						Supreme	Circuit	
1	Illinois.....	5	5	30	25	No	No	
2	Alabama.....							
3	Arizona.....	1	1	25	25	Yes	Yes	2
4	Arkansas.....	5	2	30	25	Yes	Yes	6
5	California.....	2	2	30	28	Yes	Yes	5
6	Colorado.....	5	2	?	?	Yes	Yes	
7	Connecticut.....	2	2	30	30	Yes	Yes	
8	Delaware.....							
9	Florida.....	5	5					
10	Georgia.....	3	3	25	25	Yes	Yes	
11	Idaho.....	2	2	30	30	Yes	Yes	7
12	Indiana.....	?	5	?	30			
13	Iowa.....							
14	Kansas.....							
15	Kentucky.....	5	2	30	30	Yes	Yes	4
16	Louisiana.....	2	2	35	35	Yes	Yes	8
17	Maine.....				?	Yes	Yes	5
18	Maryland.....	5	5	30	30	Yes	Yes	
19	Massachusetts.....							
20	Michigan.....							
21	Minnesota.....					Yes	Yes	
22	Mississippi.....	5	5	30	26	Yes	Yes	
23	Missouri.....	5	3	30	30	Yes	Yes	
24	Montana.....	2	1	30	25	Yes	Yes	
25	Nebraska.....	3		30	?	Yes	Yes	
26	Nevada.....	2		25	25	Yes	Yes	
27	New Hampshire.....							
28	New Jersey.....					†	†	
29	New Mexico.....	3	3	30	30	Yes	Yes	
30	New York.....					†	†	
31	North Carolina.....	2		25	?	Not required	Not required	
32	North Dakota.....	3	2	30	25	Yes	Yes	

TABLE LVI—Continued
QUALIFICATIONS OF RESIDENCE, AGE, AND PROFESSIONAL TRAINING REQUIRED FOR JUDICIAL CANDIDACY IN VARIOUS STATES

No.	States	Residence in State		Age		Admitted to Bar		Professional* Length of Bar Experience	
		Supreme	Circuit	Supreme	Circuit	Supreme	Circuit	Supreme	Circuit
33	Ohio.....	2	2	30	25	Yes§	Yes§	6	6
34	Oklahoma.....	3	3	?	21	Yes	Yes	5	4
35	Oregon.....	"Elector"		?	?	Yes	**	5	5
36	Pennsylvania.....	"Elector"		26	26	Yes	Yes		
37	Rhode Island.....	5	5	30	25	Yes	Yes	7	4
38	South Carolina.....	2	1	35	30	Yes	Yes		
39	South Dakota.....	5	5	30	27	Yes	Yes		
40	Tennessee.....	"Resident"		30	25	Yes	††	5	5
41	Texas.....	5	3			Yes	Yes		
42	Utah.....	"Resident"				Yes			
43	Virginia.....	"Elector"		30	30	Yes	Yes	9	
44	Washington.....	5	5	25	25				
45	West Virginia.....	"Elector"		30	28				
46	Wisconsin.....	3	2						
47	Wyoming.....								

*Seventeen states specify particularly that judges of their courts of record shall be "learned in the law," which has been construed to mean duly admitted to the bar, as follows: Alabama, Arizona, Arkansas, Colorado, Idaho, Louisiana, Maine, Maryland, Minnesota, Missouri, New Mexico, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Wyoming.

†In New York, to be eligible for a court of record, City to 10 years for chief justice of the Municipal Court of New York City.

††Apparently the only specific qualification demanded of judges is that they may not be an officer in a railroad, banking, or insurance corporation.

§In New Jersey, the judges of high courts are not required legally to have professional qualifications, but the judges of criminal district courts, juvenile court judges, and vice-chancellors must be either members of the New Jersey Bar or "counsel at-law," the latter group "of at least 10 years' standing."

¶In Pennsylvania, judges that all district judges and associate district judges of the high courts.

¶¶Rhode Island specifies that to be required legally for judges of the high courts.

¶¶No specific qualifications appear to be required legally for judges of the high courts.

¶¶Apparently the only specific qualification demanded of judges is that they may not be an officer in a railroad, banking, or insurance corporation.

3. PROFESSIONALIZING JUDICIAL OFFICE

Perhaps the most desirable element of a selective system is a set of conditions surrounding judicial office that will naturally attract the best-qualified members of the Bar. If the Bench were regarded as a professional career many accidents of selection would be avoided and much might be done to sustain all levels of the judiciary on the high plane accorded it by American tradition.

What are the conditions that tend to place judicial office on a high professional plane? We may list some of the major factors as follows: (1) salary; (2) tenure; (3) provision for retirement on account of age or physical disability; (4) removal of the incompetent or corrupt; (5) protection from all interference, official or otherwise.

Salary.—The salary of judicial office should compare favorably with the compensation paid to other officers of the same grade in the same community or commonwealth. It should also be sufficiently high to enable the incumbent to sustain the plane of living which the dignity of the position demands. The salaries of the local judiciary and of other offices on comparable planes are set forth in Table LVII.

In comparison with other officers, it will be seen that judges are exceedingly well paid. The state courts are more liberally compensated than any other positions in the state or county service, excepting the state's attorney, who is essentially a part of the judicial system. The salaries of the Municipal Court justices also compare favorably with those of other prominent officers. Only the

TABLE LVII
SALARIES OF CHICAGO JUDGES COMPARED WITH OTHER OFFICERS
OF CORRESPONDING STATUS

Court	Other Offices	Salaries 1936
Illinois Supreme Court.....	Governor.....	\$15,000
	Treasurer.....	12,000
	Secretary of state.....	10,000
	Attorney-general.....	7,500
	Clerk, Supreme Court.....	10,000
	Clerk, Supreme Court.....	7,500
Circuit, Superior, Probate, and County.....	State's attorney.....	15,000
	Sheriff.....	14,599
	Clerks of courts.....	9,960
	President, County Board.....	9,000
	County commissioners.....	12,000
	County commissioners.....	7,500
Municipal Court of Chicago: Chief Justice..... Associate Justice.....	.....	15,000
	.....	10,000
	Clerk, Municipal Court.....	9,000
	Bailiff, Municipal Court.....	9,000
	Corporation counsel.....	15,000
	Mayor.....	18,000
	Treasurer.....	10,000
	Alderman.....	5,000

mayor and corporation counsel, the two chief executive officers of the city, receive higher compensations.

Although conditions vary widely in different cities, and salary rates would be affected accordingly, the amounts paid to the principal judicial posts in six of the largest centers, presented in Table LVIII, show a comparison extremely favorable to rates paid in Chicago. Thus only in Philadelphia is an inferior state court paid higher than in Chicago. The New York and Pennsylvania high courts receive higher rates than in Illinois.

TABLE LVIII
SALARIES OF CHICAGO JUDICIARY COMPARED WITH THOSE PAID
IN OTHER LARGE CITIES

	State Supreme Court	State Inferior Courts	Municipal Tribunals	
			Chief Justice	Associate Justices
Chicago.....	\$15,000	\$15,000	\$15,000	\$10,000
New York*	25,000	*	*	*
Philadelphia†	20,000	18,000 14,000 (Common Pleas)	10,500	10,000
Detroit:				
Circuit.....		14,500	(Recorders)	12,500
Probate.....		13,500	(Traffic)	8,500
Common Pleas.....		8,500		
Los Angeles.....	8,000			
Cleveland.....	12,000	12,000	10,000	9,000
	8,000 (Court of Appeals)	(Common Pleas)		

*The New York Supreme Court, County courts, Court of General Sessions, and Surrogates' Court receive salaries of \$22,500; the City courts, \$17,500; the Municipal Court, \$12,000; the Court of Special Sessions, \$17,500; and the Magistrates' Court, \$12,000 (chief justice, \$15,000).

†The Philadelphia Magistrates' Courts are compensated: chief justice, \$6,000; magistrates, \$5,000.

In the matter of salary, we are justified in concluding that the Chicago judges are well compensated and that the prevailing rates are probably not a drawback to candidacy.

Tenure of office.—Among the developments of the early nineteenth-century democratic movement was the complete reaction from life-tenure to terms of comparatively short duration for judges of the state courts. Thus, life-tenure has survived in only three states (Massachusetts, New Hampshire, and Rhode Island), and, of course, in the federal judiciary. On the other hand, we find terms for judges of high courts ranging from two years (Vermont) to a maximum of twenty-one years (Pennsylvania) with the provision of ineligibility after one term. The terms of judges in the inferior state courts are even shorter on the average, for they range from two years (Vermont) to fourteen years in New York and fifteen years in Maryland. The terms of tenure in the various states are summarized in Table LIX.

Illinois is considerably above the average in the nine-year term

THE RÔLE OF THE BAR

TABLE LIX
JUDICIAL TENURE IN STATE JUDICIAL SYSTEMS SUMMARIZED

Term in Years	State Supreme Court	State Inferior Tribunals
Life or good behavior.....	3	3
21.....	1	.....
15.....	1	1
14.....	2	1
12.....	4	.....
10.....	6	1
9.....	1	.....
8.....	9	5
7.....	2	2
6.....	18	15
4.....	.....	15
2.....	1	1

of its Supreme Court judges and approximately average in the terms of its inferior state tribunals (excluding the County and Probate courts). The six-year term of the Municipal Court, on the other hand, contrasts favorably with the practice of other states.

Chicago is distinctly below the practice of New York and Philadelphia, which are most comparable to it in point of size. The fourteen-year term in New York and ten-year term in Philadelphia contrast strikingly with Chicago's six- and four-year terms for the inferior state tribunals. The same is true for the ten-year terms of municipal judges in New York and Philadelphia and the six-year term in Chicago.

We have seen that the six-year term of Chicago judges, with the conditions surrounding the elections, creates a situation of great uncertainty as to the chances for re-election. The tradition that a good judge should be re-elected may be nullified by partisan political control of the nominating machinery and the effect of national political tides. There can be no doubt that this uncertainty is an important factor in the reluctance of many well-qualified attorneys to become candidates for judicial office. We have cited instances of such reluctance and the difficulty at times which some party leaders have had in inducing good candidates to run for office.

The logic of a longer term seems inescapable, especially if with it is coupled an expeditious means of removing an incompetent or corrupt judge. The considerations supporting a longer term are: that a longer term is more likely to bridge a political cycle and thus, in part, lessen the uncertainty of re-election due to adverse tides; that political animosities against an incumbent are also not likely to be carried over a long period, due to the inevitable shifts and changes in political leadership; the longer term lessens the amount of time the incumbent must devote to political fence-building; the longer term reduces the re-election hazard; and the longer term tends to make judicial office a career.

What length of term is preferable? Our belief is that if the

present terms of the Circuit, Superior, and Municipal judges were doubled, all of the benefits cited for long-term tenure would accrue, provided that a method were introduced for promptly ousting incompetent or corrupt judges. That proviso is all-important, however.

Retirement provisions.—An inseparable part of a good judicial system is adequate provision for the retirement of incumbents who become disabled through sickness or age, with pension during the period of incapacity. The provisions which various states have made in this respect are summarized in Table LX. It is noteworthy that seventeen states have made no provisions. In many others the conditions for granting a pension appear difficult of attainment. Although Illinois has a low age minimum (sixty-five years) the requirement of twenty-four years of service may serve to reward a faithful incumbent.⁶ It obviously fails to meet the case of the judge who had served honorably, but had been disabled by infirmities of age, whose continuance on the Bench would imperil the administration of justice. When such cases have arisen, the practice has been, by agreement among the judges, for the incompetent member to go into semi-retirement, with full salary, pending the conclusion of his term.

The questions at what age should an incumbent retire; whether retirement should be voluntary or compulsory; and what the amount of the pension should be are matters which might well be investigated by a committee of the Bar Association.

Removal of incompetent or corrupt judges.—No argument is required to show that some method is needed to get rid of a judge who proves to be incompetent or corrupt. The difficulty of accomplishing this is the principal objection to long-term tenure. The problem is involved, however, in all lengths of terms, especially in respect to unworthy incumbents. Resignations from the Bench are rare even under threat of impeachment proceedings. Time alone, of course, will solve the matter in cases of short-term incumbents, but the inability of the body politic to defend itself against the ravages of a corrupt judge is truly pathetic.

There are six methods of removal (see Table LXI). These are: (1) the process of impeachment; (2) the process of concurrent resolution; (3) the process of address by the two houses of the legislature to the executive who accomplishes the removal; (4) the

⁶In 1936 Judge Marcus A. Kavanagh, aged 77 years, who retired from the Superior Court bench in 1935 after thirty-seven years of service, was the only man receiving a judicial pension in Cook County. Six incumbent judges were eligible for pensions, as follows: John R. Caverly, aged 73, service twenty-six years; Kickham Scanlan, aged 71, service twenty-seven years; Wm. H. McSurely, aged 71, service twenty-nine years; Joseph Sabath, aged 65, service twenty-six years; M. L. McKinley, aged 65, service twenty-five years; and Denis E. Sullivan, aged 66, service twenty-five years. In 1936 Judge Harry Fisher had served a total of twenty-four years in the local courts, but was only 54 years old.

TABLE LX
PROVISION FOR JUDICIAL TENURE AND RETIREMENT IN THE VARIOUS STATES

No.	States	Tenure* in Years		Yes	No	Minimum Age	Minimum Length of Service in Years	Retirement Provisions†	
		S.	C.					Pension Provision	
1.	Illinois.....	9	6	x	.....	65	24	One-half salary for life.	
2.	Alabama.....	6	6	.....	x	.....	.....	.....	
3.	Arizona.....	6	4	.....	x	.....	.....	.....	
4.	Arkansas.....	8	4	x	.....	70	10	One-half salary for life.	
5.	California.....	12	6	x	.....	70	12	One-half of salary last receivable.	
6.	Colorado.....	10	6	x	.....	68	10	\$3,000 for life.	
7.	Connecticut.....	8	8	.....	x	.....	.....	.....	
8.	Delaware.....	12	12	.....	x	.....	.....	.....	
9.	Florida.....	6	6	x	.....	74	30 (continuous service)	Supreme Court justice full salary.	
10.	Georgia.....	6	4	.....	x	.....	.....	.....	
11.	Idaho.....	6	4	.....	x	.....	.....	.....	
12.	Indiana.....	6	6	.....	x	.....	.....	.....	
13.	Iowa.....	6	4	.....	x	.....	.....	.....	
14.	Kansas.....	6	4	x	.....	65	30 (last two years continuous)	Cities 50,000 to 90,000 pay half of last salary. Governing body can retire employee after twenty years.	
15.	Kentucky.....	8	6	.....	x	.....	.....	.....	
16.	Louisiana.....	14	6	x	.....	70-75	20 (continuous)	Supreme Court justices receive two-thirds pay at 70 years; full salary at 75 after fifteen years' service; three-fourths pay if retired through disability.	
17.	Maine.....	7	7	x	.....	70	7	Three-fourths salary; must resign during 70 or waive pension rights.	
18.	Maryland.....	15	15	x	.....	70	10-15	\$2,400 yearly.	
19.	Massachusetts.....	Go behav ior	6	x	.....	70	10 (continuous)	Three-fourths of salary (reduced to half-salary since 1920).	
20.	Michigan.....	8	6	x	.....	70	10 (continuous)	Half-pay for life (applies to Supreme Court).	
21.	Minnesota.....	6	6	x	.....	68	23	Or if past 75 and served ten years receives half-pay for life.	
22.	Mississippi.....	8	4	.....	x	.....	.....	.....	
23.	Missouri.....	10	6	.....	x	.....	.....	.....	
24.	Montana.....	6	4	.....	x	.....	.....	.....	
25.	Nebraska.....	6	4	.....	x	.....	.....	.....	

TABLE LX—Continued
PROVISION FOR JUDICIAL TENURE AND RETIREMENT IN THE VARIOUS STATES

No.	States	Tenure* in Years		Retirement Provisions†		
		S.	C.	Yes	No	Minimum Length of Service in Years
26.	Nevada.....	6	4		x	
27.	New Hampshire.....	Good behavior	7	x		
28.	New Jersey.....	8	6		x	
29.	New Mexico.....	14	14	x		
30.	New York.....	8	8	x		
31.	North Carolina.....	10	6			
32.	North Dakota.....	6	6		x	
33.	Ohio.....	6	4		x	
34.	Oklahoma.....	6	6		x	
35.	Oregon.....	21	10	x		
36.	Pennsylvania.....	Good behavior	10	x		
37.	Rhode Island.....	10	4			
38.	South Carolina.....	6	4		x	
39.	South Dakota.....	8	8		x	
40.	Tennessee.....	6	4	x		
41.	Texas.....	10	4		x	
42.	Utah.....	2	2		x	
43.	Vermont.....	12	8			
44.	Virginia.....	6	4	x		
45.	Washington.....	12	8			
46.	West Virginia.....	10	6	x		
47.	Wisconsin.....	8	6		x	
48.	Wyoming.....			x		

*Tenure of Municipal Judges in New York and Pennsylvania is ten years; in Michigan, Ohio, and Illinois, six years.
†Few of the states appear to require retirement at specific ages. Maine and New Hampshire are exceptions. Maine provides a pension at age 70, but unless the judge retires during that year, he waives his pension rights. New Hampshire flatly requires judges to retire at age 70.

dismissal or "recall" of the judge by popular vote; (5) the authority vested in the governor or higher judicial tribunal to remove judges in courts of inferior grade; and (6) the expedient occasionally adopted of legislating a court and its incumbents out of existence.

Table LXI lists the removal procedures of the various states.

In a number of states alternative routes are provided. While the first four types of process apply to judges of all ranks, special notice should be made that a number of states empower the governor or higher tribunals to remove certain judges in specified cases. Thus in Alabama the Supreme Court may remove the judges of courts which appeal cases to it. In Indiana the Supreme Court may remove any judge convicted of a crime. In Minnesota twenty-five electors may petition the governor for the removal of a judge and the case is heard by three district judges. In Montana a judge forfeits his office by more than sixty days' absence from the state. In Nebraska and Vermont the governor may remove his appointees. In New York, the Court of Appeals may remove judges of the inferior courts and in Texas a hierarchial system of removal is provided—district judges may remove county officers; and the Supreme Court may remove district judges. Louisiana provides three alternatives: impeachment; address by two-thirds vote; and removal by the courts upon complaint of the governor, 25 citizens, or one-half of the practicing attorneys of the jurisdiction.⁷ Oregon, on the other hand, shuns the customary methods of impeachment, address, concurrent resolution, etc., and relies entirely upon the recall and judicial proceeding. In fact, the constitution specifically stipulates that public officers shall not be impeached, but incompetency, corruption, malfeasance, and delinquency may be tried in the same manner as criminal offenses and a judgment given of dismissal from office.⁸

Illinois' first constitution provided for impeachment and legislative address. Both methods were continued in the second constitution. The constitution of 1870 discarded both methods in favor of removal for cause by concurrent action of both houses, of three-fourths vote of the members elected to each house.⁹ Careful in-

⁷*Louisiana Constitution of 1921*, Art. IX, secs. 1-5.

⁸*Oregon Constitution*, Art. VII, sec. 6.

⁹*Constitution of 1870*, Art. VI, sec. 30. "The General Assembly may, for cause entered in the journals upon due notice and opportunity for defense, remove from office any judge, upon concurrence of three-fourths of all members elected, of each house. . . ."

The *Constitution of 1848*, Art. V, sec. 12, provided that the judges of the Supreme Court could be removed by impeachment or by a two-thirds vote of the legislature. The members of the legislature were declared ineligible for any vacancies thus created.

The *Constitution of 1818*, Art. IV, sec. 5, provided that judges could be removed for any reasonable cause not sufficient for impeachment on address of two-thirds of each branch of the General Assembly.

TABLE LXI
SYSTEMS IN THE VARIOUS STATES

Remarks

PROVISIONS FOR REMOVING JUDGES (A)

No.	State	Impeachment	Joint Address	Concurrent Resolution	Recall	Remarks
1.	Illinois.....	Yes	Yes	Yes		Three-fourths' vote required in both houses.
2.	Alabama.....	Yes (Supreme Ct.)	Yes		Yes (1912)	Justices of courts which appeal cases direct to Supreme Court may be removed by latter. 15 per cent of voters must sign recall petition.
3.	Arizona.....		Yes	Yes	Yes (1911)	Applies to judges of Supreme Court, Circuit Court, Chancellors.
4.	Arkansas.....					C. R. applies to Supreme and Superior Courts. Other judges removed by senate at recommendation of governor.
5.	California.....	Yes	Yes		Yes (1912)	Applies to Supreme and Superior courts.
6.	Colorado.....	Yes or				Justices especially subject to impeachment.
7.	Connecticut.....	Yes	Yes			Supreme and Circuit judges especially subject to impeachment.
8.	Delaware.....	Yes				Governor may suspend other officers or remove with consent of senate.
9.	Florida.....					Any judge convicted of crime may be removed by Supreme Court.
10.	Georgia.....	Yes				Applies to Supreme and District Court judges.
11.	Idaho.....	Yes			Yes (1914)	Applies to Supreme and District Court.
12.	Indiana.....	Yes				Applies to Court of Appeals and Circuit Court.
13.	Iowa.....	Yes	Yes			Applies to Court of Appeals by Court of Supreme Court.
14.	Kansas.....	Yes	Yes			Supreme Court—Judge removed by trial by Supreme Court.
15.	Kentucky.....					of Records—Judge removed by these terms.
16.	Louisiana.....		Yes			Every state officer subject to these terms.
17.	Maine.....	Yes	Yes			Removable by governor with consent of judicial council, upon address of both houses.
18.	Maryland.....		Yes			Judges of courts of record are exempt from the recall act.
19.	Massachusetts.....			Yes		Judges of courts or electors may petition governor. 25 freeholders or electors may petition governor.
20.	Michigan.....	Yes				before 3 other district judges.
21.	Minnesota.....	Yes	Yes			Removal mandatory for all public officers following conviction for neglect or misdemeanor.
22.	Mississippi.....	Yes				Circuit, Criminal, and Appeals. Joint
23.	Missouri.....	Yes and				Impeachment for Supreme, address in case of disability.
24.	Montana.....	Yes				judge absent from state more than 60 days forfeits his office.

TABLE LXI—*Continued*
PROVISIONS FOR REMOVING JUDGES. (A) SYSTEMS IN THE VARIOUS STATES

No.	State	Impeachment	Joint Address	Concurrent Resolution	Recall	Remarks
25.	Nebraska.....	Yes				Governor may remove his appointees. Supreme Court hears impeachments; proceedings against a Supreme justice are heard by all district judges.
26.	Nevada.....		Yes		Yes (1913)	
27.	New Hampshire.....		Yes			
28.	New Jersey.....	Yes				
29.	New Mexico.....	Yes				
30.	New York.....	Yes		Yes		
31.	North Carolina.....					C. R. applies to Supreme Court and Court of Appeals. Other judicial officers except Municipal by two-thirds vote of senate on recommendation of governor.
32.	North Dakota.....	Yes		Yes	Yes	Recall—any elective judicial officer. Impeachment—judicial officers except county judges, justices of peace, and police magistrates. Governor may remove local and county officers, including county judges, on grounds.
33.	Ohio.....	Yes				
34.	Oklahoma.....	Yes				
35.	Oregon.....			Yes		
36.	Pennsylvania.....		Yes		Yes (1908)	Elective state officers including judges. All public officers of state subject to recall. Also subject to removal after criminal prosecution for incompetency, corruption, malfeasance, etc.
37.	Rhode Island.....	Yes				Applies to all except Supreme Court judges.
38.	South Carolina.....	Yes	Yes	Yes		C. R.—for Supreme Court justices.
39.	South Dakota.....	Yes				
40.	Tennessee.....	Yes				
41.	Texas.....	Yes	Yes	Yes		C. R. applies to any state court. County officers removed by district judges. District judges removed by Supreme Court. Higher justices removed by impeachment and joint address.
42.	Utah.....	Yes				
43.	Vermont.....	Yes		Yes		
44.	Virginia.....			Yes		
45.	Washington.....	Yes	Yes			
46.	West Virginia.....	Yes				
47.	Wisconsin.....		Yes	Yes		Elective officers, except judges, subject to recall.
48.	Wyoming.....	Yes				

TABLE LXI

(B) REMOVAL PROCESSES EMPLOYED IN THE VARIOUS STATES SUMMARIZED

Process	Number of States in Which Processes Are Provided
Impeachment.....	14
Joint address.....	5
Concurrent resolution.....	4
Judicial proceeding.....	1
Impeachment and joint address.....	10
Impeachment and concurrent resolution.....	6
Impeachment and recall.....	3
Joint address and recall.....	2
Joint address and judicial proceeding.....	1
Concurrent resolution and recall.....	1
Recall and judicial proceeding.....	1
Total.....	48

quiry has revealed only one case of attempted removal of an Illinois judge in the 118 years of the state's existence. In that instance (an impeachment) the charges were not upheld in the legislative trial.¹⁰

The requirement of a three-fourths vote of all elected members has operated since 1870 as a barrier to attempted removal. Two circumstances may account for the failure of this method to function in Illinois, in so far as the Chicago judiciary is concerned: (1) the division of the commonwealth into Chicago and "downstate" has formed strong cleavages within the Cook County delegation in local issues. The Cook County delegation contains more than enough votes to defeat any removal vote under the three-fourths requirement. (2) The political organizations' control of all elective public offices and the bipartisan agreements between the organizations, particularly in the matter of the Bench, have always been sufficiently powerful to checkmate any unfriendly raid upon the Chicago judiciary, especially when the raid has been aimed at "the system," of which the offending judge was merely the creature.

Illinois, as we have seen, provided instances early in its history of the sixth method of removal—legislating a court out of existence for political or other reasons.

¹⁰The General Assembly of 1832-33 tried Judge Theophilus W. Schmidt on charges of corruption, oppressive conduct, and other misdemeanors, including: selling a Circuit clerk's office, swearing out fictitious writs returnable before himself, imprisoning a Quaker for not taking off his hat in court, and suspending a lawyer from practice because he advised a client to apply for change of venue. The trial of the impeachment lasted from January 9 to February 7, 1833. Fifteen different senators voted for conviction on the various indictments but not over 12 voted on any single specification, and as 15 was the two-thirds vote required for conviction, he was acquitted. The House then by two-thirds vote passed a resolution to remove him by address, but this failed in the Senate (F. A. Crossley, *Courts and Lawyers in Illinois*, p. 175).

It is interesting to note that several federal judges sitting in the United States District Court at Chicago have been the objects at various times of congressional investigations intent on impeachment,¹¹ but thus far none has been presented for trial. As a matter of fact, since the country began only nine impeachment cases involving federal judges from the entire nation have been presented to the United States Senate. Of these, three were acquitted; four were convicted and removed; and two resigned.¹²

4. "TAKING THE COURTS OUT OF POLITICS"

The American courts enjoy an independence that is almost unique among judicial systems. The principle of judicial supremacy and freedom from dominance by co-ordinate branches of the government are among the most assured precepts of our public life today. "Interference" in the sense employed in this chapter refers not to the official status of the courts but rather to the unofficial conditions surrounding the office which obligates the incumbent to the party organizations and thus make possible activities that may impair judicial impartiality. This unofficial bond of obligation is created particularly under the short-term, elective system and under the regimentation of the political process by the party organizations.

How protection from such interference is to be accomplished remains one of the complex problems connected with the drive for bettering the Bench. Its difficulty is increased because it involves the human factor both in the incumbent and in the party agents, and touches the unofficial activities of the party organizations. Theoretically the problem doesn't exist at all. That it does exist, however, none who knows his courts would be so naïve as to deny.

The widespread ramifications of the party organizations and the numerous footholds which they have obtained in the selective process have already been discussed. The question arises: What means are available for minimizing the influence of the party organizations in the administration of justice? The following suggestions are possibilities:

a) *Apply the nonpartisan principle to judicial elections.*—Illinois has already taken the first step in minimizing the influence of political issues upon judicial selection by providing for a separate election for the Supreme, Circuit, and Superior courts. This principle should be extended to include the Municipal, Probate, and County courts. If this is accomplished, the need of a separate ballot is automatically eliminated.

¹¹Judge Henry W. Blodgett in 1879; Judges James H. Wilkerson and Charles E. Woodward in 1933-34. In respect to the latter two, see dispatches in the *Chicago Daily News* of April 30, 1935, printing report of Congressional Committee recommending that no action be taken toward their impeachment.

¹²*Chicago Daily News Almanac*, 1931, p. 478, lists all but one of the cases.

Mere segregation of election days, however, will be a futile gesture unless the nonpartisan principle is applied to all phases of the process. The party convention and the party primary should be abolished as nominating devices, and the nominating petition substituted therefor. This would serve to break the *direct* hold which the party organizations now have on nominees. The organizations could continue to sponsor and support candidates, but the bond between sponsor and nominee would be weakened and the way would be opened for support from nonpartisan citizen groups.

More to the point is the provision that all party designations or devices should be omitted from the judicial ballot. Voters would then tend to discriminate between candidates as individuals. By eliminating the party column, the mass momentum of the organization's customary tactics would be lacking. The absence of the party circle would rob the party organization of one of its greatest assets.¹³

But here the practical world of affairs arises to suggest that unless some responsible agency intervenes to assume responsibility for the candidates, to conduct their campaign, and to whip up popular interest, the nonpartisan plan will fail to achieve its objectives. Self-seekers of unknown qualifications would file, and few voters would attend the polls. Nonpartisanship assumes, moreover, that the voter who is habitually partisan in all other matters will divest himself of this attitude in choosing judges. It assumes also that the mercenary ménage of the established party agencies will likewise refrain from partisanship and that the political machinery will repose in storage during that campaign. What is likely to happen, of course, is that the mercenaries will be on hand in full force, while the independents stay at home, and the party machine

¹³*Efforts of the Chicago Bar Association to obtain the adoption of the non-partisan ballot.* At a meeting of the Association held November 12, 1912, the following resolution was adopted:

"Resolved, that the President and Board of Managers be and they are hereby requested to urge upon the government and the legislature of Illinois such change in the election laws as will result in the election of judges upon a separate ballot and without party designation" (*Annual Report of John T. Richards*, 1913, pp. 3, 4).

Mr. Richards subsequently became chairman of a committee on change in method of selecting and retiring judges which drafted a bill for a nonpartisan judicial election. The committee had campaigned for the measure, but in the words of the president, M. D. Follansbee, "found opposition from the Bench and Bar of that part of the state outside Cook County. . . . It is fairly certain that the bill will not become a law, although there is some prospect of going part way and having a separate ballot for judicial elections in Cook County." (*Annual Report*, 1915, p. 5).

Apparently as a result of this drive, the separate ballot for the Municipal Court elections was enacted (*Laws*, 1915, p. 399). But notice the catch in the reform: "Said ballot shall in all other respects be like the ballots for other candidates at said election." This provision retained the party column and the party circle, the two great aids to organization voting.

will operate in full gear using "instructions" to identify the politically anonymous candidates.

If an organized group to compete with the established party agencies in selecting judges is desirable, who or what is to comprise, finance, and operate it? To trust that some public-spirited individuals will assume the task would be political naïveté. In periodical emergencies the task may be handled in such a way. For the month-by-month, year-in-and-year-out responsibility of competing with the established party agencies, reliance can be placed only in some group which has a constant interest to be served in maintaining the Bench at a high level. The Bar obviously contains the elements of such a group.

b) *Minimize the political atmosphere surrounding the courts.*—At the present time one of the political footholds is the fact that the attachés in practically every court sitting in Chicago hold their positions through the party patronage system.¹⁴ Thus the prosecutors, clerks, bailiffs, deputy sheriffs, jury commissioners, referees, masters-in-chancery, receivers, reporters, etc., are selected primarily for, and as a result of, their service to the party organizations with which the heads of the respective offices are affiliated. The effect of this situation is to surround the judge with politically minded appointees and to imbue the whole process with a political atmosphere. The dependence of the judges upon these assistants and the important part which they play in the administration of

The climax of the special committee's efforts was reached in the hearing on the bill at Springfield. Downstate legislators bluntly told the Association's spokesmen, Mr. Richards related to the writer, that all sections outside Chicago were satisfied with the present partisan ballot provisions and that they saw no reason for changing solely to oblige the Chicago Bar Association.

Again, in 1923, the Association renewed its efforts for nonpartisan judicial elections. A bill was introduced, at its request, which applied solely to Municipal Court elections, as follows: "No party name, party initial, party circle, platform, principle, appellation or designating mark of any kind is to appear on the ballot."

Said the Association's *Record* (February, 1923, p. 1) of the proposal: ". . . To free the office of judge from the influence of party politics has long been one of the outstanding aims of the Association. The time now seems ripe to seek to make this program a reality for the Municipal Court by the submission of the bill referred to." The bill did not pass, however.

A third effort to obtain the adoption of the nonpartisan principle was made in 1933. After the proposition of supporting such legislation was approved by a 2,281 to 222 referendum vote, a bill (House Bill 727 Woodward; see *Chicago Daily News*, April 19, 1933) was introduced at the Association's request. It provided for nomination by petition, nonpartisan ballots, with names listed alphabetically and rotated in series. The provisions applied to all state, county, city, and municipal courts, its application to the Municipal Court of Chicago being subject, however, to approval by referendum. The bill was introduced on April 19 and was referred to the House Committee on Elections, where it died. On June 16, as the legislative jam reached its peak, the bill was "tabled" along with all other pending bills on which no action was to be taken.

"The probation staff of the Juvenile Court and the social service staff of the Municipal Court are the only exceptions. They have been chosen by a system of voluntary civil service.

justice is well known. These appointees too often provide avenues for exerting "political influence" to minimize their part in the situation.

Practically all of these assistants could be selected by a central personnel agency on a basis of merit. They should hold their positions permanently, and should not be subject to the success or failure of the party organizations at the polls. The repeated failure of attempts to apply the merit system to the staffs in the offices of the sheriff, county clerk, and the various clerks of courts indicates the zealous care with which the party organizations guard these lucrative sources of political patronage.

c) *Reduce the non-judicial duties of the judiciary.*—A long step in minimizing political control of the Bench was taken when the consolidation of the Chicago park districts was effected in 1934 and the Circuit Court judges were relieved of the obligation of appointing the South Park Commissioners. Because of its political ramifications the Circuit judges should be relieved also of the responsibility, assigned by the constitution, of fixing the number of employees in the county fee offices. The highly political task of supervising elections in Chicago is a perversion of the normal, judicial functions of the County Court. The purely judicial work of this office should be transferred to other courts, and the County judge should be chosen as an administrative officer handling an important phase of the public business.

d) *Uphold the dignity of the Bench.*—The manner in which the Circuit and County courts of Cook County have been utilized to exercise appointive or supervisory authority over other governmental departments, with the consequent political boomerang effect on the members of these benches, calls attention to the extent to which other states (1) have thus similarly sought to capitalize the independence and integrity of the Bench, and (2) have endeavored by legal means to protect the impartiality and dignity of the judicial office.

1. *Extra-judicial duties.*—Pennsylvania even exceeds Illinois in the extra-judicial duties which it has imposed upon the Court of Common Pleas in Philadelphia and other cities in that state. The judges of that court appoint (in addition to their court employees) all except ex-officio members of the following: board of revision of taxes (3 members, 3-year terms); board of viewers (9 members, 3-year terms); commissioners of Fairmount Park (15 members, 5-year terms, 5 ex-officio); board of prison inspectors (11 members, 1-year terms), board of directors of city trusts (14 members, 2 ex-officio, during good behavior); board of public education (15 members, 6-year terms).¹⁵ Also, the courts of quarter

¹⁵See *Philadelphia Government*, 1932, pp. 64, 65 (Bureau of Municipal Research of Philadelphia).

session in Pennsylvania fix the boundaries of election districts.

Several states, as in Illinois, have given various courts duties in election matters. In Michigan, the probate judge acts as chairman of the board of election commissioners.¹⁶ In Missouri the Circuit Court in each county is given supervisory control over the registration of voters.¹⁷ New Hampshire requires the presiding judges of its Superior courts to "examine, record and count" election returns and to declare the winners. The Superior Court also appoints certain town officers where the selectmen have failed to do so.¹⁸ The county courts in Oregon make vacancy appointments in the

TABLE LXII
LEGAL PROVISIONS IN VARIOUS STATES TO SAFEGUARD
JUDICIAL INDEPENDENCE AND DIGNITY

Provisions	States
1. Ineligible to hold other public office.	Ariz., Ark., Cal., Conn. (specified Gen. Assem.), Idaho, Ind., Iowa, Kans., Maine, Md., Mass., Mich., Minn., Mont., Nev., N.H., N.J., N.M., N.Y. (except constitutional conventions), N.D., Ohio, Ore., Pa., S.C., Tenn., Va., Vt., Wash., Wis., Wyo.
2. Shall not practice law.	Ala., Ariz., Ark., Cal., Colo., Fla., Ga., Ia., Kans., Md., Mo. (except county judge), Nebr., Nev. (except when party to suit), N.Y., N.D., S.D., Tenn., Utah, Va., Wash. (except where directly interested), Wyo.
3. Shall not accept other fees or salary.	Ark., Cal., Colo., Del., Mass., N.Y., Pa., S.C., S.D., Tenn., Wash., W.Va., Wis.
4. Shall not be candidate for other than judicial office during term.	Neb., Okla., Ohio, Ore., S.D., Wash.
5. Absence from Bench more than specified time forfeits office.	Ariz. (60 days), Cal. (60 days), Nev. (90 days), Utah (90 days), Wash. (60 days except as extended by governor).
6. Fined for neglect of duty.	N.M. (Prob. J.).
7. Shall not practice in own court.	Conn.
8. No judge can have a partner acting as attorney in any court of state.	Nev.
9. Partner may not practice in his court.	Utah, Wash.
10. Appellate judge may not review decisions made by a court of which he was then a member.	N.Y.
11. Restrictions on amount spent to obtain nomination.	Idaho, Nev., N.M., Ohio, Tenn., Tex.
12. Judge shall hold no party office.	Ill. (Municipal Court of Chicago).

¹⁶*Michigan Acts of 1925*, p. 351.

¹⁷*Missouri Acts of 1931*, pp. 213, 217.

¹⁸*New Hampshire Acts of 1919*, chaps. 111, 176.

offices of county commissioner, treasurer, assessor, surveyor, clerk, sheriff, and coroner.¹⁹

2. *Legal restrictions on the judicial office.*—On the other hand, several states have specifically limited or forbidden the assignment of non-judicial duties to the courts. Michigan, North Dakota, and Pennsylvania (in case of its Supreme Court) have provided constitutionally that their judges shall exercise no power of appointment or extra-judicial duties, except as therein specified. Other provisions seeking to protect the judicial office are listed in Table LXII. Especially notable are the points that the judge shall be ineligible to hold other public office; that he shall not be a candidate for other than judicial office during his term; and restrictions on the amount of campaign expenses.

The restriction that no judge of the Municipal Court of Chicago shall hold a party office directs attention to a growing tendency on the part of Chicago and Cook County judges to participate in political campaigns and in individual instances to use their offices as stepping-stones to higher political preferment. Under the short-term, elective system, the necessity is obvious for the incumbent to be a candidate to succeed himself. There are numerous ways in which the sitting judge, with dignity to himself and to his office, can win the necessary public notice to facilitate his re-election.

It should not be possible, however, for a judge to act as a leader or worker for the party organization or to be permitted to become a candidate for any other position while holding judicial office. The politically ambitious judge should resign before seeking another office. The Bar's code of ethics warns against unjudicial conduct. But in Chicago the ethical code seriously needs reinforcement. The Chicago Bar could appropriately urge Illinois to adopt the safeguards already cited, which other states provide to preserve the dignity of their judiciary.

¹⁹*Oregon Acts of 1931*, chaps. 23, 24, 31.

CHAPTER XXV

SYSTEMS OF JUDICIAL SELECTION

SELECTING AGENCIES

Although there are forty-nine separate systems of judicial selection operating simultaneously in the United States, they may be grouped for purposes of comparison into four major types. They are:

1. The appointment of the judiciary by the chief executive with the advice and consent of the upper branch of the legislature,¹ as in the federal government, Connecticut,² Delaware, and New Jersey.
2. Appointment by the chief executive, with confirmation by a judicial council elected for that specific purpose, as in Maine, Massachusetts, and New Hampshire. In November, 1934, California adopted this method in principle for original appointments to its Supreme, District Courts of Appeal, and the Superior courts of such counties as vote to adopt the plan, but requires that judges "run on their records" for re-election every six years.³
3. Appointment by the concurrent action of the legislature, as in Rhode Island, South Carolina, Vermont, and Virginia.
4. Election by the people. The names of the thirty-seven states which follow this plan are listed in Table LXIII.

¹In Mississippi the judges of the Supreme Court only are appointed by the governor and confirmed by the senate (Constitution, § 145).

²In Connecticut, however, the emphasis is reversed but with the same effect—the judges of the Supreme Court of errors and the Superior courts are appointed by the general assembly upon nomination of the governor (Constitution, Art. XXVI).

³The California plan provides that the governor shall fill vacancies by appointment, subject to confirmation by a "Commission on Qualifications" and ratification by the people in an uncontested election at the next regular election, which occurs within a maximum period of two years. The incumbent again "runs on his record" at the end of the regular six-year term. The "Commission on Qualifications" consists of (1) the chief justice or acting chief justice of the Supreme Court; (2) the presiding justice of District Court of Appeal of the district in which a justice or a judge of the Superior Court is to serve (in cases of appointments to the Supreme Court, the presiding justice who has served longest as such upon any District Court of Appeal); and (3) the attorney-general. These commissioners are ex-officio officers and are not elected or appointed solely for this purpose. Vacancies on the Bench may occur by death, resignation, or failure of the electorate to approve the extension of an incumbent's term in a referendum in which such extension is the sole issue.

This plan was approved November 6, 1934, by a vote of 810,320 to 734,857 as Initiative Constitutional Amendment No. 3 to Art. VI, sec. 26 (New) of the California Constitution. It was part of a far-reaching program sponsored by the California State Chamber of Commerce to "Curb Crime," involving judicial selection, centralizing law enforcement in the attorney-general, permitting judges to comment upon evidence, and authorizing pleas of guilty before committing magistrates. See *Crime Can Be Curbed*, pamphlet published by the California State Chamber of Commerce, San Francisco, for a complete account of this history-making campaign and accomplishment.

TABLE LXIII

SYSTEMS OF JUDICIAL SELECTION IN THE UNITED STATES

System	Commonwealths in Which Operative
1. Appointment by the chief executive, with the advice and consent of the upper branch of the legislature.	Federal government, Connecticut,* Delaware, New Jersey.
2. Appointment by the chief executive, with a confirmation by an elected council or ex-officio commission.	Maine, Massachusetts, New Hampshire, California.†
3. Appointment by the legislature.	Rhode Island,‡ South Carolina,§ Vermont,¶ Virginia.
4. Elected by vote of the people.	Alabama, Arizona, Arkansas, Colorado, Florida,** Georgia,†† Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming.

*See footnote 2, p. 336. In Connecticut, Probate judges and justices of the peace are elected.

†See pp. 8, 346.

‡In Rhode Island the governor appoints judges of the District courts.

§In South Carolina judges of County courts are elected; local magistrates are appointed by the governor.

¶In Vermont probate judges, assistant county judges and justices of the peace are elected. Municipal and City Court judges are appointed by the governor.

**In Florida, the governor appoints the judges of the Civil Courts of Record (with senate confirmation) and of the Courts of Crime.

††See p. 5, for historical sequence of methods of selection in Georgia.

While the several methods predominate in the respective states, there are many noteworthy exceptions. These occur usually in the filling of minor judicial posts. In Connecticut, for example, probate judges and justices of the peace are "appointed by the electors." In Rhode Island, where the legislature "elects" most of the judiciary, the judges of the district courts are appointed by the governor. Likewise in Vermont, where this legislative prerogative has also survived, the governor appoints the judges of the Municipal and City courts, but the people elect the probate judges, assistant county judges, and justices of the peace. In Maine the justices of the peace are elected.

In several states which have adopted the elective principle, there are many exceptions to the general rule, usually in the direction of empowering the chief executive of the state or city to appoint minor judicial officers—justices of the peace, local magistrates and judges of municipal or city courts.

EXPEDIENTS FOR MINIMIZING POLITICAL CONSIDERATIONS IN JUDICIAL SELECTION

In view of the provision made in Chicago for separate judicial elections and separate judicial ballots, it will be interesting to notice what means other states have provided to minimize political considerations in judicial selection. Five expedients appear to have been tried—nonpartisan ballots, special boxes for judicial ballots, separate judicial ballots, separate judicial elections, and limits on judicial campaign expenses.

Nonpartisan elections.—Twelve states⁴—Arizona, California, Minnesota, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Washington, Wisconsin, Wyoming—provide for nonpartisan, “no party” or “judicial tickets” on which the candidates bear no party designation. California and Wisconsin specify that judicial ballots shall be deposited in separate boxes. In Iowa municipal judges are nominated and elected at regular city primaries and elections, but in each case there is a separate “municipal judiciary ballot” on which the candidates’ names are listed without party designation.⁵ The judges of the Court of Common Pleas and the Recorders’ Court of Detroit, Michigan, are elected on nonpartisan tickets.⁶

Separate judicial elections.—Only two other states appear to have adopted provisions for separating judicial from the regular election contests, as Illinois has done in the case of Supreme, Circuit, and Superior Court judicial elections. Maryland stipulates that judges elected in Baltimore shall be chosen in October, while its other judges are chosen in November.⁷ The Constitution of Wisconsin provides (Art. VII, sec. 9) that “there shall be no election for a judge or judges at any general election for state or county officers, nor within 30 days either before or after such election.”

Limiting campaign expenditures.—Six states have limited the amounts candidates may spend in their campaigns. Thus, Idaho limits a candidate’s expenditure in a nominating election to “not more than 30 per cent of the annual salary of the winner.”⁸ Nevada limits the amount to 20 per cent of a year’s salary, but allows a similar amount, in addition, to be paid as a party assessment.⁹

⁴Five states have enacted and later repealed nonpartisan ballot acts. Kansas adopted one in 1913 and repealed it two years later (*Laws*, 1915, 207); Iowa in 1917 (*Laws*, 1917, c. 63) repealed a statute passed in 1911 and substituted special party conventions for judicial nominations; Pennsylvania in 1921 (*Laws*, 1921, c. 423) abolished an act adopted in 1913; Missouri repealed in 1919 (*Laws*, 1919, p. 329) an act adopted in 1913 providing a nonpartisan ballot for state circuit judges in St. Louis.

⁵Sec. 10,653, p. 1357, *Iowa Code of 1927*.

⁶*Government of Metropolitan Detroit* (“Michigan Local Government Series,” 1934), pp. 30-32.

⁷*Maryland Constitution*, Art. IV, sec. 3.

⁸*Idaho Code of 1932*, secs. 33-618.

⁹*Nevada Code of 1929*, sec. 2602; (I, 798).

New Mexico, on the other hand, places the limit at 10 per cent "outside of hotel and traveling expenses."¹⁰ In Tennessee, however, no candidate may spend in a primary, convention, or election "more than \$3,000 and an expense statement must be filed five days before the election, primary, caucus or convention."¹¹ Texas, likewise, sets specific limits in primary campaigns, but scales the amounts permitted for different offices;¹² in addition, however, the candidate is required to pay his proportionate share of the expenses of holding the primary.¹³

Since 1930, Ohio limits the campaign expenses of candidates for the Court of Appeals to \$2,000 and for the Court of Common Pleas to \$500, provided that an equal amount may be spent in the primary. A sliding scale of an additional \$5.00 per 100 votes is provided in case the total vote in the last general election was over stipulated amounts.¹⁴

The majority of states, however, in which judges are elected considers the choice of the judiciary to be in the same category as other elective officers. Accordingly, these states have adopted the standard system of two political parties to stage-manage the selection of their judges. The political organizations representing the major parties, it is logical to conclude, occupy in every commonwealth a primary position in the process of selection similar to that they enjoy in Illinois and Chicago. The same is probably true, perhaps in somewhat lesser degree, in the states which have adopted the expedients described above. Little conclusive evidence is now available concerning the efficacy of the nonpartisan ballot as a neutralizer of political influence.¹⁵ However, with the regular polit-

¹⁰*Laws of 1931*, chaps. 130, 229.

¹¹*Code of 1932*, secs. 2259, 2269-70.

¹²*Code of 1925*, sec. 3170. Expense permitted: Supreme Court, \$2,500; Court of Appeals, \$1,500; district judge, \$600; county judge, \$300 to \$750, depending upon the size of county.

¹³It is interesting to notice that the party convention method of nomination survives wholly or in part in Iowa, New York, Utah, and West Virginia, as well as in Illinois.

¹⁴*Ohio Code*, sec. 4785-184. Some interesting data on campaign expenditures by candidates for the Common Pleas Court of Cleveland prior to 1930 were presented by Paul Lamb to the American Bar Association conference in 1933, as follows: In 1920 ten candidates reported expenditures of \$3,000; in 1924 twenty-three candidates spent over \$22,000; in 1925 thirteen candidates spent the same amount; in 1926 fifteen candidates spent \$56,000. One candidate alone spent nearly \$15,000, and, to play safe, contributed \$1,000 to each of the Democratic and Republican county committees. He adds: "Among the contributors to the campaign funds during these years, as reported to the Board of Elections, appeared the names of well-known professional gamblers, bootleggers, and racketeers." The Ohio corrupt practices act (*Page's Code*, sec. 5175-2) requires the filing of itemized statements by candidates and also (sec. 5175-3) names and addresses of all contributors.

¹⁵In theory the nonpartisan ballot should promote the influence of the Bar Association. It would, in fact, if other things were equal. R. E. Cushman (*Annals of the American Academy*, CVI, 86-90) cites the following claimed advantages of the nonpartisan ballot in judicial selection: (1) It makes possible the election of men affiliated with minority parties. (2) It facilitates the

ical organizations still active in the field (for, nowhere under the nonpartisan judicial ballot is it even assumed that they cease and desist) and without a competing group vigorously to support the nonpartisan principle,¹⁶ the conclusion is warranted that political considerations will remain a primary factor in judicial selection.

SYSTEMS OF SELECTION IN LARGE CITIES

Since our interest centers in a metropolitan community, a brief survey of judicial selection in other large cities will provide a basis of comparison for Chicago.

New York City combines the elective and appointive systems. Judges of the state court are elected on partisan ballots for fourteen-year terms. The mayor appoints the 43 members of the magistrates' court, a municipal tribunal. Their term is ten years.¹⁷

Philadelphia elects all of its judges on partisan ballots.

Detroit elects its judges on partisan and nonpartisan ballots.¹⁸

Los Angeles elects its judges on ballots which bear no partisan designation.

Cleveland elects its judges on a nonpartisan ballot.

St. Louis elects its judges on partisan platforms.

re-election of sitting judges. (3) It develops in the Bar a sense of responsibility in respect to judicial candidates. (4) Judges thus chosen assume office free from partisan political obligations.

The disadvantages summarized by Cushman are: (1) Party responsibility with all its disadvantages is better than none at all, as under the nonpartisan system. (See *Criminal Justice in Cleveland*, p. 269, for anomalous results in Cleveland.) (2) It accentuates the necessity for personal campaigning. Cushman, in conclusion (p. 90), "ventures the opinion that no substantial gain has been made in the introduction of the nonpartisan ballot, but that in general it has resulted in less intelligent selection of judicial officers."

The members of the Bar are divided on the merits of the nonpartisan principle. The Chicago Bar Association has sought to have the system applied to Chicago (see p. 331, *supra*). The Cincinnati conference on the selection and tenure of judges in Ohio, held October 20, 1934 (*University of Cincinnati Law Review*, VIII, 359-522) indicated by a five-to-one vote dissatisfaction with existing methods of selection in that state attributable in considerable measure to the nonpartisan ballot (p. 491). In the words of Newton D. Baker, reporting a conversation with the late Senator Theodore E. Burton: "'Baker, you and I together drew the nonpartisan primary law in Ohio. Do you think we did the people of Ohio a service?' And I said to him: 'No, Senator, I regret to say I think we did them a very great dis-service'" (*op. cit.*, p. 483).

An inquiry of the American Bar Association (reported in its *Journal*, Vol. XX, No. 9), covering 128 associations (14 of which were statewide and 21 of which were in cities of 75,000 or more), revealed the following attitudes

"Official recognition of the organized Bar as such a possibility is contained in the following Iowa statute: "... Bar Association or convention of attorneys of any county or judicial district shall be deemed a political organization" for purposes of nominating candidates for district judge (*Iowa Code of 1927*, sec. 759).

"See *American Judicature Society Journal*, XIX, 53.

"See Stuart Perry's illuminating article on the Detroit judicial election situation and his analysis of its Spring, 1935, campaign in *ibid.*, pp. 78-84.

Baltimore elects its judges on partisan ballots at separate elections, as noted above. The term of Maryland judges is fifteen years, however.

Boston is the only city above 750,000 population in which the judges are appointed and have continuous tenure during good behavior. All judicial officers are nominated and appointed by the governor of Massachusetts, by and with the advice and consent of the council. This body consists of eight persons, chosen at large by popular vote, whose sole duty is to act with the governor in the appointment and retirement of judges.¹⁹

When *Chicago* is compared with the foregoing cities, it will be seen that: none of its judges is appointed (except to vacancies where the unexpired term is less than one year); it utilizes the convention and direct primary methods of nomination; there are separate judicial elections for certain state courts, but it combines the election of County, Probate, and Municipal Court judges with the general primaries and elections; a separate judicial ballot is provided for the Municipal judicial ticket in the general election; and perhaps most important, all ballots in every election bear partisan designations and that convenient device for facilitating organization voting—the party circle.

PROPOSED MODIFICATIONS IN VARIOUS SYSTEMS OF SELECTION

At the present time there is widespread discussion regarding methods of judicial selection, and in several states the agitation has reached the stage of pending action. In certain areas discussion of the need for improving existing methods has been going on

toward the nonpartisan principle: 55 favored, and 34 opposed, a separate nonpartisan ballot following a primary; three favored the ballot without a primary; in Iowa, which had such a law from 1913 to 1919, three voted against it; in Pennsylvania, where it existed up to 1921, seven voted against it and six for it. In Oregon and Nevada, where it is now in use, two in each state favor it, while in Ohio, two votes were cast for and two votes against it.

For an unfavorable opinion on Detroit's experience with the nonpartisan ballot, see Stuart Perry, *American Judicature Society Journal*, XIX, 84.

Would the nonpartisan ballot improve judicial selection in Chicago? The answer is both "no" and "yes." "No" because under existing political conditions it would have little chance to operate. The nonpartisan aldermanic election act is a precedent for what would happen if it were extended to judicial elections. The party organizations successfully bridge the lack of partisan identification and dominate aldermanic contests the same as other elections. Only in a few instances have "independent" candidates been successful, and in the eventual "showdown" the organizations have always won. "Yes," with several emphatic ifs, such as: (1) If the courts were shorn of their political perquisites; (2) If the party organizations could be induced to keep hands off judicial nominations; and (3) If a strong citizens' agency, sponsored or supported by the Bar, were to assume the rôle vacated by the party organizations. Only then, in the writer's opinion, would the theoretical advantages of the nonpartisan principle be achieved.

¹⁹*Constitution*, Part II, Chap. III, art. I.

for many years. Fully two decades of educational effort preceded California's successful campaign in 1934. Now that California has "broken the ice," other states will undoubtedly seek to modify their selective systems.

A brief survey of the noteworthy proposals, paying particular attention to those sponsored by Bar associations, will serve the dual purpose of summarizing suggested modifications and of canvassing the present status of movements in the various states.²⁰

THE FEDERAL PLAN

The *National Municipal League* advocates the plan of appointment by the chief executive, with the consent of the upper house, for judges of the state supreme court for terms of ten years; without legislative concurrence, it would empower the chief executive to appoint the judges of lower courts for similar terms. The legislature would have power to remove a judge, upon due notice and after opportunity to be heard, by a two-thirds vote.²¹

The *Association of the Bar of New York City* has also indorsed the plan of appointment by the governor with the advice and consent of the senate, because, that plan fixes the responsibility upon the governor. . . . Where responsibility for action is fixed upon an individual he is generally inclined to give careful consideration to his action and to the advice of persons competent to give it. Desirable men would often accept appointment who would decline to enter a political campaign for election.²²

The *New York State Bar Association*, at its annual meeting in January, 1933, by a vote of 94 to 54, voted down a committee report recommending the executive appointment of judges in the Empire State.²³

Willoughby also indorses the federal plan, declaring that if it is safeguarded by the provision that power of appointment does not carry with it power of removal, it more nearly meets the requirements of a desirable selective process than any other method, with the possible exception of the method of selection by the head of the judicial branch.²⁴

RESTRICTED APPOINTMENT BY THE EXECUTIVE

A plan of judicial selection that is receiving widespread attention retains appointment by the executive as its central feature but requires that the appointment either be made from a list of candidates recommended by an independent commission or be confirmed by an independent agency other than the state senate. In states

²⁰See the *Report of the Committee on Judicial Selection* of the Conference of Bar Association Delegates at Los Angeles, 1935, for a summary statement of considerations and proposals; also, Charles T. McCormick, "Judicial Selection—Current Trends and Plans," *Illinois Law Review*, XXX, 446-68.

²¹National Municipal League, *Model State Constitution*, secs. 60, 69.

²²Association of the Bar of New York City. Report of special committee approved April 12, 1932.

²³See address of Julius Henry Cohen to American Bar Association in 1933.

²⁴W. F. Willoughby, *Principles of Judicial Administration*, p. 366.

having fixed tenure, this plan is carried one step farther: at the expiration of each term, the incumbent is required to "run on his record" without competition.

Harold J. Laski²⁵ indorses the federal plan and permanent tenure with compulsory retirement at the age of seventy years, but adds the stipulation that in making nominations the governor shall be assisted by a committee composed of the judges of the Supreme Court, the attorney-general, and the president of the state Bar Association. Promotions would be made internally from a list of three names submitted by the committee.

Florida.—Active discussion of desirable plans for judicial selection has been going on among the Bar. At the January, 1935, meeting of the state association, for example, a proposal was presented which was first approved by the Dade County (Miami) Bar Association.²⁶ Under this plan Supreme Court vacancies would be filled by the governor from a list of four eligibles nominated by a council composed of the chief justice, three laymen, and three lawyers. All other judges would be appointed by the chief justice with the consent of a majority of the associate justices. Judges of inferior courts would be subject to retirement, not only by impeachment, but also upon information in the Supreme Court filed by the nominating council or by the court on its own motion, with provision for suspension pending a hearing.

The proposed grounds of removal include physical or mental incapacity or disability, and participation in a political campaign. The recommended tenure is during good behavior to age seventy, with a retirement pension.²⁷

Georgia.—Plan originated by the University of Georgia Institute of Public Affairs: Appointment by the governor with confirmation by the senate, but the governor is limited, in appointing Appellate Court judges, to five names, made up through a bar plebiscite. For the Superior Court, three names, chosen by a plebiscite of the local Bar, will be submitted. Tenure is as now: 10 years for appellate judges; 6 years for superior court judges. Judges wishing an additional term will have their names put on the ballot with no competing names.²⁸

Indiana.—The State Committee on Governmental Economy, appointed by Governor Paul V. McNutt, recommends appointment by the governor from nominations made by the judicial council. Tenure during good behavior is recommended.²⁹

Michigan.—Within the past two years Michigan has acted upon

²⁵*Michigan Law Review*, XXIV, No. 6 (April, 1926), 529-43.

²⁶This proposal was not adopted, however. See p. 349 for another plan proposed later.

²⁷*American Judicature Society Journal*, XVIII, No. 5 (February, 1935), 146.

²⁸*Ibid.*, p. 166.

²⁹*Ibid.*

proposals to change its systems of judicial selection. In November, 1934, a constitutional amendment, submitted by petition, which provided for nonpartisan nomination and election of trial judges, was defeated. This defeat gave impetus to a movement sponsored by the State Bar Association, which for several years had had a committee on judicial selection at work. In September, 1934, this committee proposed a plan providing for a judicial commission composed of three appointed by the governor and six named by the Bar Association.

In January, 1935, the Michigan Farm Bureau called a conference of citizens' organizations and requested the aid of the State Bar Association in drafting a constitutional amendment. Action on the resulting proposal was halted, however, by an adverse vote in the state senate. No further action appears possible until 1941. The provisions of the latest proposal show the tendency to favor the method of appointment from a selected list. The plan, approved by both the Bar and civic organizations, provided for appointment to vacancies, and upon the expiration of terms in courts of record, by the governor from one or more nominations made by a nonpartisan judiciary commission. The commission is to consist of the chief justice of the Supreme Court, one circuit judge and one probate judge selected by the Supreme Court, three attorneys selected by the governor, and three laymen selected by the senate, not more than three of whom shall go out of office during any two-year period. An option was also included to permit any county or judicial circuit by referendum to retain the elective system.³⁰

Ohio.—Two alternatives have been under discussion by the Ohio Bar Association. Some time ago approval was given to a plan for appointment of all judges by the governor subject to confirmation by a commission to be named by the state senate. In 1935, an effort was made to substitute the federal plan as the Association's suggestion. But the matter was re-referred for further study.³¹

In March, 1936, the Citizens' League of Cleveland proposed a plan for Ohio which closely follows the California system. It suggests that all judges of the Supreme Court, Courts of Appeal, and of lower courts of record in counties over 50,000 population be appointed by the governor subject to confirmation by a commission composed of the chief justice of the Supreme Court or a person designated by him, one Appellate and one Common Pleas judge chosen by the respective groups of judges, the attorney-general or a person designated by him, and one layman appointed by the lieutenant-governor. Judges would be required to run against their

³⁰*Ibid.*, pp. 82 and 167-68.

³¹*Ibid.*, p. 168; see also pp. 144-45, for other discussions of judicial selection in Ohio.

records without competition at the end of their sixth year of service and every tenth year thereafter.³²

Utah.—A proposed constitutional amendment would limit the governor's appointive power to a list of eligibles obtained through Bar plebiscites, five names for Supreme Court judgeships and three for district courts. No confirmation of the appointments is prescribed, and there is no periodic submitting of names to the electorate. Supreme Court judges would be reappointed at the end of their terms "unless charges of failure to properly discharge the duties of the office shall have been sustained after a public hearing by two-thirds of the members of a committee of the Bar who shall be appointed as a standing committee of the Supreme Court." The same committee would function in case of charges filed against district court judges.³³

Wisconsin.—The Wisconsin Bar Association has under consideration a plan which provides for appointment by the governor from an eligible list of not more than three names submitted by a judicial council, which has no other function. The council is to comprise the chief justice, the deans of the law schools of Marquette University and the state university, and seven practitioners selected by the board of governors of the Wisconsin Bar Association. Appointments would be subject to confirmation by the state senate. After a term of six years, the judges' names would be submitted to the voters with no competing candidates. If the governor does not approve of any of three eligibles nominated, he may submit a nominee's name to the council for its approval or rejection. The matter of retirement is left to legislative enactment.³⁴

Illinois proposal of 1922.—Executive appointment from a list of recommendations was the method of selection included in the proposed Illinois constitution of 1922 as an optional provision for selecting the judiciary of Cook County.³⁵ It was proposed that the governor, without legislative concurrence, be empowered to fill any vacancy by appointment from a list containing the names of not less than four eligible persons for each vacancy, nominated by a majority of the Supreme Court, not more than one-half of such nominees to be affiliated with the same political party.

Every judge thus appointed would hold office during good behavior unless removed as a result of an adverse vote. Every sixth year the electors were to be given an opportunity to express their disapproval of each judge. If disapproved by a majority of the voters, the office was to be declared vacant and the incumbent re-

³²*Greater Cleveland*, Vol. XI, No. 27, published by the Citizens' League, Cleveland, Ohio.

³³*Ibid.*, pp. 143 and 169.

³⁴*Ibid.*, pp. 147 and 169.

³⁵Sec. 111 of the *Proposed Illinois Constitution of 1922*.

moved, thus becoming ineligible for reappointment to the court for a period of six years.

The "Spencer plan," suggested by the Louisiana State Bar Association as a provision of the Louisiana Constitution of 1921, embodied the same provision. It was proposed that at intervals of twelve years the voters would decide on continuance of a judge in office, and that the incumbent's name would appear alone on the ballot. A majority of those voting for governor would be required to defeat a judge. Only if this were done, would there be a competitive election. The provision was not adopted, however.³⁶

Kansas.—A plan adopted by the State Bar Association provides for appointment of all judges by the governor from eligible lists submitted by the Bar, with periodic submission of judges to the electorate.³⁷ The Kansas judicial council has also prepared amendments to the constitution leaving judicial selection to be "provided by law."³⁸

Oklahoma.—A draft judiciary article has been recommended which provides that judges in the last year of their terms may declare their candidacy and have their names submitted to the electorate without competition. In case of failure to obtain a majority vote, the vacancy is to be filled by the governor's appointment. In case of district judges, the governor's appointment is to be subject to approval by a majority of the Supreme Court justices.³⁹

The California Commonwealth plan.—The action of California in November, 1934, is the first instance of an actual break from the plan of popular nomination and election in the direction of a guided choice by the executive with periodic approval by the electorate. The details of the plan have already been presented.⁴⁰

As finally enacted, the California proposal must be adopted by county referenda before it may apply to the selection of Superior Court judges. At this writing (April, 1936) it is reported that San Mateo County will vote to adopt the new plan in May, 1936, and that Los Angeles and San Francisco counties will ballot on the proposition in the November, 1936, elections.⁴¹

Proposal to "keep books on the judges."—An agitation for a change in methods of judicial selection has been conducted over a period of years in the pages of the Los Angeles County Bar Association *Bulletin*. This discussion has developed several highly constructive suggestions as to some concrete functions which a com-

³⁶Ben Robert Miller, *The Louisiana Judiciary* (Baton Rouge, University of Louisiana, 1932), pp. 122, 123.

³⁷*American Judicature Society Journal*, XVIII, 167.

³⁸See *Report of Committee on Judicial Selection, Conference of Bar Delegates*, 1935, p. 9.

³⁹*American Judicature Society Journal*, XVIII, 168.

⁴⁰See pp. 6, 336.

⁴¹See *American Judicature Society Journal*, XIX, 187.

mission on qualifications might perform in behalf of improved judicial selection. No part of the suggestions, however, are officially included in the new California plan, although presumably some of them could be adopted by legislative or administrative action. In this writer's opinion they are important addenda to the subject of how to improve judicial selection.

John Perry Wood of the Los Angeles Bar has proposed that an official commission on qualifications be empowered to "keep books on the judges" and to conduct fact-finding studies concerning proposed candidates.⁴² He proposes that such a body perform the following functions:

The board would have a research director, "a thoroughly competent man," whose salary would be paid by the public.

The board would keep a running survey of the work of the courts, compiling statistical information designed to show the number of cases tried, the number of reversals, and the capacity, diligence, and devotion to duty of each judge.

At least thirty days prior to each judicial election, the board would determine what judges it should recommend to be retained. Those whom it recommended for retention, the governor would be required to reappoint. If the board failed to recommend a judge for reappointment, the office would become vacant and the board would certify to the governor a list of lawyers with a full statement of the qualifications and experience of each.

The plan also involves the following important correlative provisions:

a) No judge would be eligible for any other elective office during the term for which he is selected.

b) The state judicial council would be empowered to appoint a commission of three to investigate the conduct of any judge. It would have the power to issue subpoenas, take testimony, etc., and to make findings either for or against continuance of any such judge in office. The commission's findings would be filed with the secretary of state and upon its declaration that an office is vacant, the governor would be empowered to fill the vacancy by appointment from a list supplied by the commission.

This plan attempts to standardize and introduce into the selective process the type of considerations which long have formed the basis of Bar associations' recommendations of judicial candidates.

APPOINTMENT BY COMMISSION

A plan formulated by the *State Bar of Washington* would continue the existing short tenure (four years, Superior Court; six years, Supreme Court) and would provide for original appointment

⁴²See article by John Perry Wood, *Los Angeles Bar Association Bulletin*, VII, No. 9 (May 19, 1932), 259-63.

by a judicial commission no member of which would serve more than six years in the aggregate. It would be composed of the governor, three lay electors selected by him from districts, and the seven members of the State Bar's board of governors selected from congressional districts by the lawyers of the respective districts. The lay commissioners would serve three-year terms. The commission may be summoned by the governor or any three members. The commission would also serve as a disciplinary body. Complaints would be referred to the attorney-general for investigation. If he files formal charges, the commission may by a two-thirds vote remove an offending judge.⁴³

AN ELECTIVE CHIEF JUSTICE EMPOWERED TO APPOINT HIS ASSOCIATES

A compromise between the elective and appointive systems is the proposal that the chief justice of a tribunal, who shall be elected, shall be empowered under specified conditions to appoint his associates.

A variation of this method was proposed in 1927 by the *Cleveland Bar Association*.⁴⁴ Under its proposal the chief justice of the State Supreme Court would be elective, but all other judges would be appointive. The governor would appoint the associate judges of the Supreme Court, with the consent of two-thirds of the senate, or with the approval of a judicial council selected by the senate. The chief justice, however, would appoint all other judges. He would name the appellate judges, with the consent of a majority of his associates on the Supreme Bench. He would appoint the inferior judges with the approval of the appellate judges of the respective districts.

MODIFIED NOMINATING PROCEDURE UNDER THE ELECTIVE SYSTEM

Two plans have been proposed for introducing a corrective procedure in the nomination of candidates under the elective system. Both plans are based on the assumption that the electorate will vote for candidates whose qualifications are attested by an agency in which it can have confidence. One such plan is the creation of a continuing nominating commission made up partly of former judges who have resigned or been retired for age, and partly of elected members.⁴⁵ Candidates for nomination would be designated by petition and would be considered by the nominating commission. The commission would either approve or disapprove of the candidates so designated. The names of all candidates designated by petition, whether approved or disapproved by the nom-

⁴³*American Judicature Society Journal*, XVIII 169, and XIX, 52.

⁴⁴See *ibid.*, X, 177-83, for the full text of the original report; see *ibid.*, XVIII, 144, and 168 for later developments in Ohio; also for a report and plan proposed by the Citizens' League of Cleveland, Ohio.

⁴⁵Association of the Bar of New York City, *Special Report of the Committee on the Judiciary on Methods of Selecting Judges*, p. 4. Approved April 12, 1932.

inating commission, would be placed upon a nonpartisan ballot devoid of any political emblems. After the name of such candidate would be a statement indicating whether the candidate had been approved or disapproved by the nominating commission.⁴⁶

Advocates of this plan believe that better-qualified candidates will appear upon the ballot more advantageously than under present methods and conditions, and that the electorate will be disinclined to vote for candidates who have been disapproved by the nominating commission.

Another plan to guide the electorate has been proposed by the *City Club of New York City*. It advocates the election of judges upon a nonpartisan ballot. Nominations would be made by petition, with the added feature that the governor would be required, four weeks in advance of the closing of nominations, to propose a certain number of candidates. Opposite the names of such candidates on the ballot would appear the words "Recommended by the Governor." The proponents of this plan argue that:

Thus the people will actually have better control over the judiciary. It is easier for the people to get the kind of governor they want and thereby automatically secure the corresponding kind of judges, than it is for them to have to stand guard over their interests in every separate judicial contest amid the confusion of political campaigns involving a multitude of candidates for other offices. This constitutes our answer to those who allege that we are trying to take away from the people the choosing of judges, a statement based on the superficial assumption that to have an officer elected by the people is equivalent to having that officer chosen by the people.⁴⁷

Florida.—At the meeting of the Florida State Bar Association early in 1935 a plan involving appointment by the governor from a list of eligibles suggested by the Dade County Bar Association⁴⁸ was rejected and in its stead the following plan was approved: Circuit judges would be nominated by lawyers of the circuit in convention and by secret ballots. A tenure of eight years is favored. The matter was referred to the association's executive committee with the purpose of drafting a bill for a later session of the state legislature.⁴⁹

"The success of this plan, obviously, would depend largely upon the character and standing of the members of the nominating commission. The possible weaknesses of this plan are that the elected members of the nominating commission might be chosen for political reasons and would be little better than the political leaders who now control nominations. Also, it should be noticed that the nominating commission is given no power to make nominations of its own. Conceivably all the candidates whose names might appear on the ballot might be disapproved by the commission.

"City Club of New York, report entitled *Selection of Judges* issued in January, 1932.

Bulletin No. 10, *Illinois Constitutional Convention* (1919), p. 819, cites earlier attempts in New York to have essentially the same plan adopted.

⁴⁶See p. 343.

⁴⁷*American Judicature Society Journal*, XVIII, 166.

SUMMARY

Several significant trends are apparent in the foregoing pages. The method of popular election of the judiciary has definitely reached the end of a long era. The new tendency is in the direction of centering responsibility in the executive, but restricting his selections either to nominations recommended by an independent body of experts or requiring them to be confirmed by such an agency. To avoid a complete departure from popular participation, there is a widespread tendency to require the electorate to vote upon the simple proposition "Shall the incumbent be continued in office?" The significant fact of this provision is that the people decide not who shall be *selected originally*, but who shall be *retained* in office.

There is slowly emerging a recognition of the possibility of establishing standards of judicial fitness and of employing such standards to guide the appointing and ratifying authorities. Heretofore reliance has been placed almost solely in the native wisdom of the appointing personnel.

A significant development of many proposals is the active participation of the Bar not only in determining unofficially the qualifications of candidates, but also in becoming part of the official selective machinery.

A correlative circumstance of interest to Chicago and Illinois is that other states, containing metropolitan communities and "down-" or "up-state" hinterlands, are having difficulties in solving their problems of judicial selection. The hinterlands are reluctant to modify the time-honored elective system which is still serving them satisfactorily. The metropolitan areas, on the other hand, find it more difficult to cast off an outmoded system because they must first obtain a political release and sanction from the hinterland before they may work out their own salvation.

CHAPTER XXVI

A SUGGESTED PLAN FOR CHICAGO

While it appears that much can be done to improve conditions surrounding the judiciary, obviously the principal progress must come from improvements in the means of choosing judges and of retiring promptly any incompetent or unworthy incumbents. These phases of the problem are most acute in metropolitan centers, and Chicago, with its large electorate and long ballot, epitomizes many, if not all, of the difficulties which characterize the elective system under metropolitan conditions.¹ This circumstance may account for the fact that much of the constructive thought that has been given to the problem has come either from members of the Chicago Bar or from observers who were intimately acquainted with conditions in Chicago.

The American Judicature Society, which was founded in Chicago in 1913, was one of the first agencies to direct attention to the problem of judicial selection in large cities. A bulletin published by this Society in 1915² comprehensively reviewed the various systems of judicial selection then in existence, and on the basis of widespread critical opinion proposed four alternatives designed constructively to meet local needs in various centers. These plans were:

1. Appointment by the governor and retirement by impeachment or removal by the governor upon the address of both houses of the legislature—the Massachusetts plan.

¹Verification of this view and a timely expression of the "downstate" attitude, are the remarks of Franklin L. Velde of Pekin, Illinois, at the Grand Rapids conference of the American Bar Association. He is reported to have said: ". . . outside the city of Chicago you will find that there is no complaint among the lawyers or among the citizenship as to the character of judges. . . . the problem of the people would be handled better by giving them an opportunity to vote. In the so-called downstate regions the people know the candidates for whom they are voting, which isn't true in the city. . . . I favor the appointive system for very large cities. . . . and the elective system in smaller cities."

²*Bulletin IV-A*, "Draft of So Much of the Metropolitan Court Act as Relates to the Selection and Retirement of Judges," American Judicature Society, April, 1915.

The late Albert M. Kales, of the Chicago Bar, one of the first directors of the American Judicature Society, was one of the earliest and most productive students of the subject of court unification and judicial selection in metropolitan centers. It was he who first suggested the logic of having the responsible head of a city court select his associates; also the proposal of an eligible list which, as has been shown, is now accepted in judicial selection plans in several states. Mr. Kales also proposed that judges should continue in office until voted out at a periodic election. His ideas on judicial integration and self-discipline were first presented in the *Annals of the American Academy of Political and Social Science* (No. 141, March, 1914). See editorial note in the *Journal of the American Judicature Society*, XVIII, No. 2 (August, 1934), 45.

2. Selection and retirement of judges by popular vote—the Chicago plan.

3. Election of the chief justice for a short term of years, the appointment of associate judges by him, and retirement elections for associate judges at stated intervals.

4. Election of the chief justice for a short term and the appointment of associate judges by him without any provision for the retirement of the associate justices by popular vote. This plan provided for the retirement of incompetent judges through removal by a judicial council or by legislative impeachment.

Plan Three, in the Society's opinion, is best adapted to meet the needs and conditions of large cities. It is also the writer's opinion that Plan Three, with certain modifications, contains the most constructive suggestions for improving the selection of judges in Chicago.³

³Another observer of Chicago's problems, whose knowledge and experience entitle his views to the greatest possible respect and consideration, is Herbert Harley, secretary of the American Judicature Society and formerly for many years administrative assistant to the chief justice of the Municipal Court of Chicago. Mr. Harley's diagnosis and prescription for Chicago, written in 1916, is in part as follows:

"... Chicago must not hope to get the best judicial talent while it persists in ignoring every fact of human nature in its method of selection. The good judges that it gets are got in spite of a vicious system. No improved form of ballot will enable three-fourths of a million voters (in 1936 more than twice that number) to function intelligently in the selection of experts whose qualifications are known to less than one-tenth of one per cent of the voters. The trouble may be summarized as follows:

"1. Many lawyers ideally qualified for judicial service absolutely refuse to become politicians in order to serve the public as judges.

"2. Those who enter the lists are subjected to great and wholly useless expense of time and money.

"3. Judges are retired without reference to their fitness so the public loses the money invested in their experience.

"4. The uncertainty of tenure obliges every judge to devote a great deal of time and energy to the distracting and undignified work of politics.

"5. No opportunity is provided for retiring superannuated judges.

"Obviously the best manner of selecting judges is by an official who is competent to pass upon the qualifications of candidates and who is responsible to the public for the due administration of justice. The head of an organized court is emphatically such an officer. Nobody can better judge the qualifications of lawyers; and nobody can have a more powerful motive for making wise selections because the chief justice must rely for his own success upon the quality of the judges in his court.

"The most promising proposal for reform in selecting judges in large cities is that the administrative head of the organized court should be permitted to fill vacancies occurring during his term of office. He should himself be elected on a nonpartisan ballot for a term of four years. [Mr. Harley later recanted the nonpartisan doctrine!] If any check is placed upon his power of appointment it should be by limiting his selection to names on a public eligible list which should be kept filled by a judicial council" (excerpt from *Unification of Local Governments in Chicago*, Report of the Chicago Bureau of Public Efficiency, January, 1917, pp. 59-63; see also *Annals of the American Academy*, LXIV, 184).

PROPOSED PLAN

The proposed plan as modified is briefly as follows:

a) Elect a chief justice for a term of six years at a judicial election held separately from the general elections and on a ballot freed as far as possible from the mechanical devices (party circle, party column, etc.) which facilitate organization control.

b) Empower the chief justice to appoint the associate justices⁴ and, as now in the Municipal Court of Chicago, give him administrative authority to direct and supervise the work of the court and to assign the associate justices.

c) Provide that the chief justice shall appoint the associate judges only from a list of eligibles provided by a commission on judicial nominees⁵ elected by the members of the Illinois Bar residing in Cook County.

d) Provide that the associate judges shall hold office for an indeterminate period, subject to any one of the following provisions of removal:

1. By retirement upon an adverse vote of the people.

At intervals of six years the question would be submitted to popular vote: Shall the judge be continued in office? This would be the sole proposition affecting the particular judicial office. The incumbent would have no opposition candidate. The effect would be to obtain a decision on the incumbent's record in office. In case of an adverse decision, the office would become vacant and a new appointment would be made.

2. By removal from office upon a majority decision of the State Supreme Court after an investigation of charges formally filed and opportunity for the judge to be heard in self-defense. This provision would apply to the chief justice also.

⁴Compare Professor Charles T. McCormick's (Northwestern University) plan for Illinois under which the governor would appoint a chief justice from among the judges of the Supreme Court for a term of years coextensive with his own. The chief justice would be empowered to fill all vacancies occurring during his term. Such appointees would have life-tenure. As a signal example of judicial discernment in Illinois, Professor McCormick cites the discriminating selections by the Supreme Court of Circuit and Superior judges to sit in the Appellate branch. These "appellate judges are consistently chosen from the contingent of able, upright and dignified judges who leaven the mass" (*Illinois Law Review*, XXIX, No. 1 [May, 1934], 31-40.)

⁵Scott McReynolds, of the Los Angeles Bar, in the *California State Bar Journal*, IX, 66, suggests the following method of constituting a nominating board which at most offers anonymity and reasonable expertness: Write the names of all lawyers in the county, who have been in practice ten years or more, on slips and put them in a box. Then at random draw out a certain number of slips to constitute a Bar group. Similarly create a group among the trial judges, and also from the appellate magistrates. These groups would then constitute a nominating board and present a list of five candidates for each judicial office. The appointments would be made preferably either by the Supreme Court or "as a sop to the politicians, by the governor."

3. By legislative recall as now provided in the Illinois constitution—upon concurrence of three-fourths of all members elected, of each house. This provision would apply to the chief justice also.

4. By compulsory retirement at age seventy years after service aggregating twenty-four years, with an annuity for life of one-half the last year's salary.

As outlined, this plan would have only a limited application to the Chicago judiciary at the present time. It is contemplated, however, that eventually all of the existing tribunals in Chicago and Cook County will be merged into one consolidated court. In that case, its judges could be selected in the manner indicated. A consolidated court for Cook County was provided for in the proposed constitution of 1922. The change could be effected only by constitutional revision or amendment. Meanwhile, the proposed plan of selection could be applied to the Municipal Court of Chicago. Since this court is a statutory tribunal, a change in selecting its judges could be effected by an act of the general assembly, subject to approval by popular referendum of the voters of Chicago.

ARGUMENTS FOR AND AGAINST THE PROPOSED PLAN

This plan retains the principle of popular control over the courts, but avoids the unquestioned evils of popular election. It applies the principle of the short ballot and at the same time provides the necessary safeguards against judicial inefficiency or corruption.

The selection of judges by popular election, the American Judicature Society has pointed out, and the evidence previously presented herein clearly indicates, not only does not occur in fact, but also is extremely unlikely ever to occur in a metropolitan constituency. Popular selection under these conditions results in some *de facto* method of appointment, usually by the political party leaders. Such is undeniably the case in Chicago. Time and again it has been demonstrated that the votes cast in judicial elections amount merely to a ratification of appointments made by the party organizations through nominating conventions or by their "controlled votes" in the nominating primaries.

There have been isolated instances where favorable local conditions have enabled the members of the Bar to intervene and favorably influence this *de facto* method of appointment. In Wisconsin, for example, vacancies are filled by appointment of the governor, and it is reported that a strong tradition of re-electing sitting judges has been developed. When a vacancy on the Bench occurs, the leaders of the Bar recommend qualified candidates to the governor, who usually appoints the nominee.⁶ Also, in Cleveland, Ohio, the Bar Association, operating under a nonpartisan ballot pro-

⁶Bulletin IV A, American Judicature Society, pp. 9, 10.

vision and a favorable tradition,⁷ has sponsored and supported qualified candidates with highly encouraging success. But a long record indicates how difficult it has been to influence this *de facto* appointing authority in Chicago.

The real issue, then, is between the different methods of appointment. If this function is vested in an elective chief justice, the power will be exercised by a legally constituted authority that is conspicuous, subject directly to the electorate and in the highest degree interested in and responsible for the due administration of justice. This power would effectively supplement the administrative authority which the chief justice now has over the work of the court.

The strong tradition of "home rule" is also complied with, for the chief justice would be elected from the district which he serves. The appointing power might conceivably be vested in the mayor. Such a proposal has little to commend it, in view of the extremely partisan character of Chicago's mayors for two decades past. Similarly, it is doubtful if the plan of vesting the appointing authority in the governor would be successful. Such an optional proposal was inserted in the rejected Illinois constitution of 1922. Appointment by the governor would run counter to the "home rule" principle. It might be politically inexpedient, since many Illinois governors are "downstaters." Far more than the governor, the chief justice would be responsible for the administration of justice by the court. The chief justice would be forced to stand on the record of his appointees.

In this connection, the inadequacy may be recalled of the earlier constitutional provision whereby the governor appointed the justices of the peace in Chicago from persons recommended by a majority of the judges of the courts of record in Cook County. The scandals of the justice shops resulted in spite of the precautions thus taken. Had the appointive power been exercised by an authority who was responsible not only for the appointment, but also the administration, of the magistrates, the record of the justice courts would undoubtedly have been far different.

The chief justice is also preferred to an elected Supreme Court as an appointing authority. To vest this power in the latter agency would not conform to the home-rule principle. The responsibility also would not be concentrated. Furthermore, the justices, chosen by districts, should come before the electorate on issues other than

"The Cleveland experiment has at no time pitted itself against organized party strength. The electorate . . . was not imbued with the conception that the judiciary was to be selected on party principles. The nonpartisan ballot had precipitated a situation where the voter had little to turn to. . . . Any qualified judgment of the candidates' abilities was thus to be welcomed" (J. M. Landis, *New York State Bar Association Bulletin* IV, 191).

the exercise of an appointing power affecting the district which only one of their number represents.

In support of the proposal that the chief justice be given this important authority the examples of New Jersey and Great Britain are sometimes cited. In New Jersey the chancellor appoints seven vice-chancellors. He, however, is appointed by the governor, not elected. The results in New Jersey have been favorably commented upon.⁸ In England the Lord Chancellor, who is the head of the judicial system, exercises a large part in the selection of justices.⁹ This officer, however, is also appointed.

The provision to elect the chief justice at a separate election and on a ballot freed from the mechanical trappings that promote organization control are important features of the plan.¹⁰ The June judicial election could be utilized. The number of judicial contests (it is assumed that the judges of the higher courts would continue to be elected, but on ballots less favorable to the party organizations) would be reduced to a minimum. The consideration of the candidates' qualifications would be simplified. The Bar and its allied agencies could rally civic interest and participation more successfully than when a large group of candidates for many offices jams the field. The propositions of continuing incumbent associate judges in office would also be issues in the same election. The voters' attention would thus be subdivided, but not in the same way as if contests for individual offices were being waged at the same time.

Objection to this plan may be made on the ground that by concentrating the appointing power in a single elective officer, the *de facto* authority of the political party organizations will be proportionately increased. This reasoning seems logical in view of the dominance now exercised by the party organizations over both appointed and elected officials. However, the concentration of public attention on the important office of chief justice, and the pro-

⁸*Ibid.*, p. 49, and *Bulletin X*, p. 30.

⁹All judicial appointments in Great Britain are made by the prime minister, including that of the Lord Chancellor. The appointments to plain justiceships in the High Court, to county courts and courts of local origin—85 out of 101 paid posts in the ordinary English civil judicature—are made on the recommendation of the Lord Chancellor (R. C. K. Ensor, *Courts and Judges* [Oxford University Press, 1933], p. 6).

¹⁰The desirability of a separate judicial election is also obvious, for although in Chicago it reduces participation, it also simplifies the issues and increases the electorate's opportunities to vote for candidates on their merits.

The second matter (a ballot freed from mechanical devices that promote organization control) is equally important. Every means adopted to obviate or discourage blind partisan voting would tend, the writer believes, to promote greater consideration by the voters of the candidate's individual merits and hence, to facilitate the electorate's acceptance of the Bar Association's recommendations.

The "nonpartisan ballot" is not implied in this connection. This term connotes not only a ballot devoid of partisan emblems or arrangements, but also the lack of any responsible agency as a substitute for the party system.

vision for full consideration for the qualifications of appointees, would go far to aid in neutralizing political influence. Furthermore, the importance of the chief justiceship, it is believed, would attract men of courage and independence. The members of the Bar could devote their efforts to the nomination and election of a well-qualified person. A courageous and resourceful candidate could base a successful campaign on a pledge to "Keep the courts out of politics!"

The fear of vesting too great power in the chief justice should be offset by the knowledge that he would be subject to popular election and to removal by legislative action or, as suggested, by action of the state Supreme Court.

Nominations by the Bar for judicial appointments.—The provision that the chief justice's appointees shall be chosen from a list of nominees recommended by the Bar is based on the following premises: (1) that the appointees are chosen from the Bar; (2) that the members of the Bar are better acquainted with the qualifications of its respective members; (3) that the Bar, as an official branch of the court system, is interested to keep judicial efficiency and integrity on a high plane; and (4) that widespread publicity concerning prospective judges is one of the best barriers against venal appointments and unworthy conduct.

Concretely, it is proposed that the Bar be empowered by appropriate legislative action to organize itself and perform the following functions: (1) that a small commission be chosen by ballot of the Bar to administer this responsibility; (2) that this commission receive nominations, conduct an inquiry, and publish a report concerning the qualifications of the applicants; and (3) that the commission conduct a Bar primary in which all active practitioners would be eligible to vote; the resulting ranking of aspirants would constitute a list of eligibles from which the chief justice would be required to make his appointments.

This provision attempts to institutionalize the publicity and systematic consideration which the Bar primary plan now gives to judicial candidates. Under the proposed plan the recommendations would be presented to a single authority empowered to act directly. It would contrast sharply with the limitations of the Bar primary as now applied.

The present disunity of the Chicago Bar would be a difficulty in putting the plan into operation. The modern trend appears to be toward a united and self-governing Bar. The organized section of the Bar, comprised in the Chicago Bar Association, now constitutes a majority of the active practitioners and could guide the mechanical phases of the process in its early stages.

The expense of preparing the eligible lists, which would be small in comparison with judicial campaign costs, would be a proper charge upon the public.

It may be objected that political influence would be injected into the nominating process. But the safeguards provided could more successfully minimize this factor than under existing conditions. Padding and soliciting of votes could be more easily controlled with a limited constituency than under the present system of popular elections.

The objection will be made that the Bar is irresponsible and therefore is incompetent to participate in the nominating process. This objection would be overcome by the provision for popular election of the chief justice, who is the final selecting authority, and by the control the voters may exercise in retiring an unsatisfactory judge at the end of his term. An important safeguard would be the several means provided for removing unworthy incumbents.

Would any other method of providing a list of eligibles be better adapted to local conditions? For reasons already stated, it would seem unwise to require the state Supreme Court, as provided in the optional plan of 1922, to make either the nominations or the appointments. Similarly, the Ohio proposal for having nominations confirmed by the appellate Bench is not suitable for the reason that these judges are now chosen at the same time and as part of the same group as those whose nominations they would confirm. An appointive judicial council would be no more responsible to the general public than the practicing members of the Bar and political considerations could more easily be injected into a hand-picked group. Owing to the rivalry between Chicago and "down-state", the California plan of an ex-officio commission of state officers seems ill-advised for Chicago at the present time.

The plan for a commission on judicial nominees contains several possibilities for constructive action in judicial selection. The commission could standardize and extend the appraisal procedure already developed by the Chicago Bar Association. It could perform the various fact-finding functions relating to the appraisal process, as outlined in the Los Angeles proposal previously presented. If truly administered, such a commission could develop its recommendations to a point where they would command acceptance and popular support by their inherent merit as trustworthy prognostications of judicial capacity.

Provisions for removal and retirement. The plan of having a judge periodically "run on his record" would ingeniously minimize the undesirable elements of the political contests as now conducted. It would eliminate individual competition. It would enable the judge to devote time to public service that would build up a reputation, instead of to the undignified work of political fence-building. It would minimize the unfortunate effects of national political tides in judicial selections. It would also reduce "political accidents."

Furthermore, it would handicap unworthy candidates who benefit from the group momentum which often enables them now to be elected although they trail far behind the leaders. Each candidate would be forced to "stand on his own bottom" and on a clear-cut issue of individual merit and without the political aids (party column, party circle, etc.) now provided on the partisan ballot, the likelihood of an unworthy judge being re-elected would be greatly reduced.

The American Judicature Society plan provides for the referendum at the end of three, nine, and eighteen years of service, instead of at the end of each six-year period as herein proposed. The latter schedule is preferable, in the writer's opinion, since it conforms to the interval long in use in Chicago. It would also eliminate one series of elections which the three-year unit would necessitate.

The proposal to empower the State Supreme Court to remove any judge, a modification of the American Judicature Society's proposal, is based on the fact that the court is head of the state judicial structure and is in a better position than any other agency to determine the truth of any allegation of unworthiness against a sitting judge. The matter could be handled as a judicial proceeding and would be analogous to the court's present power to disbar attorneys. Political considerations would be less likely to intervene in this than in other methods. The disciplinary aspects of this provision would be a powerful deterrent against unworthy judicial conduct. Precedents for the removal of judicial officers as a judicial proceeding are provided by the state constitutions of Indiana, Louisiana, Texas, New York, and Oregon.

The present provision for legislative recall should be retained as a possible method to invoke. In view of its negative record, however, it would be utterly futile to rely on it as the sole means of removal, other than through an elective referendum.

The desirability of an adequate pension system cannot be overstressed. It would serve as a reward to worthy incumbents after a long period of service and would thus tend to make judicial office more attractive. It would also protect the public against incompetency on account of age.

By reading between the lines in the Society's discussions of Plan Three, it is evident that the Chicago of 1915 was in the authors' minds. At that time a decade of experience was available on which to base a plan of improved selection. In the two decades which have since elapsed the evils of political selection which it seeks to avoid have been intensified. The proposals thus are more applicable to Chicago than ever before and the modifications which have been introduced, in the writer's opinion, will serve only to strengthen the desirable features of the entire plan.

CHAPTER XXVII

A SUGGESTED PLAN FOR ACTION BY THE BAR

After two generations of effort to improve judicial selection in Chicago, and with seemingly small tangible results, has the Chicago Bar Association "come to the end of its rope?"

To the pessimist who limits his vision to the local scene, the answer may seem "yes." But to the person who views Chicago in the national perspective of the rising tide of interest in improved judicial selection, the outlook is more encouraging. For more than a decade an unspectacular, but persistent, campaign in behalf of better methods of judicial selection has been fostered by the American Bar Association and the American Judicature Society among members of the Bar and interested laity. The campaign is now beginning to show results. California's action in 1934 may mark the beginning of a new era among the states of experimenting with devices for improving judicial selection. Several other states¹ have novel proposals under consideration. Slow but certain progress in this direction is far from an idle hope.

As the subject of improved judicial selection thus comes to the fore, it is obvious that the long-continued efforts of the Chicago Bar Association have laid an invaluable and necessary groundwork for any concerted action that may be undertaken in Chicago.

The Bar and the organizations within the professions are the groups to which the community looks for leadership in these matters. The Bar has the economic interest in sound judicial administration to provide the incentive essential for a vigorous public movement. This incentive has been the mainspring of the hundreds of thousands of dollars which have been expended in past campaigns. The business and civic community will continue to co-operate, as in the past, but the organized Bar must provide the leadership and the principal support.

The Chicago situation needs two types of activity: (1) activity to raise the level of the legal profession as a whole; and (2) a broad-gauge, long-time program of action effectively to challenge the existing system of selection in its most fundamental aspects.

RAISE THE LEVEL OF THE LEGAL PROFESSION

Many of the desirable objectives have already been enumerated. Some of them lie within the jurisdiction of the Bar as now organized, and can be attained by its own efforts. Considerable progress might be made, for example, in improving the quality of legal education, in raising the standards of admission to the profession, in formulating standards of professional and judicial conduct; and in enforcing those standards.

¹See pp. 341-49.

An integrated Bar.—One approach to the problem of a competent Bar is the modern development of the integrated or inclusive state Bar.

Associations that are voluntary and selective are obviously limited in their scope and authority. An integrated state Bar, such as has been adopted in the states of Washington,² North Dakota, Alabama, Idaho, California, New Mexico, Nevada, Oklahoma, Utah, South Dakota, Kentucky, Mississippi, North Carolina, Arizona, and Louisiana,³ automatically includes all members of the profession, and has greater authority over the admission to, as well as the disbarment from, the profession. It would also aid in enforcing standards of conduct, and by the application of its sanctions seek to maintain the Bar's ancient and honorable traditions for the Bench.

Little argument is needed to support the view that if the Chicago Bar Association, under a rule of the Supreme Court, had as much authority over *admissions* as it does over *expulsions*⁴ from the profession, it would be enabled to aid materially in raising the general average of the profession and thus eventually heighten the level of the Bench. If a unified Bar plan were adopted for Illinois, the Chicago Bar Association, or the group of attorneys comprising it, would predominate in determining policies affecting Chicago.

STANDARDIZE THE QUALIFICATIONS DEEMED DESIRABLE IN A JUDGE

The almost total lack of any definite basis, other than custom or arbitrary opinion, for determining what qualifications a judge should possess, directs attention to a profitable field of inquiry. An investigation which would derive a definite statement of the qualities deemed desirable in a judge would tend to facilitate the work of the Association and to simplify the problem of selection. Candidates for the Bench could be rated in terms of standards thus formulated. The Association's task of appraising candidates would be simplified. Its recommendations would tend to become more and more based on demonstrable fact, instead of opinion supported by information known only to its committee.

Recent progress in appraising human aptitudes and capacities

²The Washington State Bar Act, for example, authorizes the board of governors, subject to the approval of the Supreme Court, to control the entire matter of admission to practice, including the appointment of examining boards or committees. The court retains, however, power to admit or reject any applicant who has taken the examination (*Annual Review of Legal Education*, 1933, p. 30).

³See *American Judicature Society Journal*, XIX, 77, for map showing progress of integrated Bar movement. See *ibid.*, pp. 170-72, for legislative review of integration movement in 1935.

⁴See *ibid.*, XVII, 21, for explanation of rule of the Illinois Supreme Court adopted April 21, 1933.

suggests that an application of analytical techniques to the wealth of information in the Association's files could improve the system of grading candidates which the Association has already developed. To the material already on hand could be added information concerning the record of successful candidates on the Bench. Comparison could then be made between these two sets of information and tentative conclusions could be reached as to the qualifications thus shown to be related to judicial ability. Many individual instances covering many years would furnish a wide basis for these conclusions.

Assuming that such tests are possible, would they be feasible? We have already mentioned the added advantage to the Association. Some sticklers for the political proprieties would be sure to resent any such infringement of popular liberty. The candidates would probably not object. They now submit to many tests that are as much or more galling to their pride—tests of political availability and feudal subservience to "the organization." They now voluntarily undergo the Association's questionnaire inquiry and the cross-examination before the committee on candidates.

The Association, of course, would proceed unofficially in developing such standards. Its efforts would become effective to the extent that the standards stood on their own merit and in the measure that they enlisted public support in the movement for a better Bench. If the Association were successful in developing reliable tests of judicial fitness, they might eventually become statutory requirements for judicial office in the same way as the minimum requirements of age, residence, and length of professional experience are now written into the law of many states.

INTENSIFY THE RÔLE OF THE BAR

With increasing emphasis, Chicago's judicial elections in 1933, 1934, and 1935 have made it embarrassingly obvious that the Bar Association must modify either its traditional rôle or the established method of selection, or both, if it is ever to cope with the conditions in Chicago we have described in the previous pages. As one writer, discussing the Chicago situation, has potently remarked:

The Bar primary is admittedly only temporizing with what informal opinion at the Bar recognizes as an evil, the selection of judges by partisan or unguided nonpartisan choice. It is only an effort to make the best of a bad situation.⁵

Another authority criticized the Association to the writer for "allowing itself to be euchred into supporting unfit candidates."

It is clear that under an evenly divided bipartisan system of selection, such as Chicago has in theory, the Bar Association, by holding a balance of power, has been able to influence judicial selection as an advisory, secondary participant in the process.

⁵J. M. Landis, *New York State Bar Association Bulletin*, IV, 198.

But when the system goes askew under the leadership of dominant, shifty, calculating, private-interest politicians, the Association is left literally high and dry. Its recommendations, be they derived with all the care and ingenuity known to man, fail of accomplishment, not because of inherent weakness, but simply because they fail to carry weight (1) with the political leaders who operate the system of selection, and (2) with a large element of the electorate which the same political leaders control at the polls.

Only by challenging the established system at its roots can the Bar Association bring its influence in judicial selection to bear. Under existing conditions the Bar primary and the ensuing publicity campaign are merely temporizing with surface indications. Structural changes are needed that will cut the lines by which the party leaders now control the selective process. These changes will come under the leadership and tutelage of the organized Bar.⁶

The proposal for an elective chief justice empowered to appoint his associates, in the writer's opinion, would go far to accomplish this purpose in the Municipal Court. It would tend to minimize the dominant position of the party leaders and would definitely establish the Bar as an essential part of the selective mechanism. The Bar primary—the traditional means of expressing the consensus of the Bar—is regarded an integral aspect of this proposal. The suggested plan, furthermore, would simplify the matter of judicial candidacies and would give greater effect to the Bar's recommendations.

While the Bar primary is admittedly a cumbersome method and subject to the limitations of any mechanical plan, its value as a poll of the active members of the Bar and as a sanction for the recommendations concerning candidates must not be overlooked. That sanction, in the writer's opinion, is the most convincing reason to the lay voter why he should seriously consider or heed the advice of the Bar. The Bar primary plan has been criticized on many scores. Much of the comment has been aimed at the mechanical details of the plan. In point of fact, for many years past the Bar Association has been the *only* agency (outside the party organizations) in metropolitan Chicago giving attention to the problem of judicial selection. From the viewpoint of the individual elector, the problem begins at scratch and any advice from an informed source is sheer gain. The problem of epitomizing the opinion of any group of experts, whether it is half a dozen or several hundred, is largely a matter of mechanics. The Association has sought to improve its Bar primary plan to make it a true consensus of its active members. There is a feeling, however, that frequently, particularly in the Municipal Court polls, the candidates are not suffi-

⁶For a skeptical view as to "Lawyers as Choosers of Judges" see *American Judicature Society Journal*, XIX, 116.

ciently well known to enable the members of the Association to vote from personal knowledge of their qualifications.

The proposed plan to elect the chief justice and empower him to appoint his associates, together with the provision for candidates to "run on their record," would meet this situation in part. Candidates for the chief justiceship and the incumbents seeking renewal of their terms would be well known to every alert member of the Bar. The plan for the Bar to participate directly in the process of nominating eligibles for the associate justiceships might develop candidates of greater experience than those produced under the present system.

Educate the electorate.—By far the greatest need in the Chicago situation is the matter of acquainting the general electorate with the inadequacies of the present scheme of judicial selection and winning its support for a sound plan to improve the system. Such a plan should be accompanied by a program of public education. It should deal with fundamental principles and should be divorced from the personal issues of any election campaign. The plan will have to be developed into a public issue on which the political groups could take sides. To do this will require months, perhaps years, of persistent, intelligent labor in coaxing public support to the new point of view.

Organize an ally.—Since the major part of any remedial program will consist in modifying existing laws and customs, the Bar Association will need the co-operation of the nonpartisan and civic forces in the community at large. For this reason it is suggested that the Association take a leaf from Ben Franklin's book of tricks and organize an ally to be the spearhead in the program. This ally should consist of lawyers and laymen who could organize the machinery of winning public support for the plan and principles of sound judicial selection laid down by the Bar.

The modern Bar association is devoted primarily to advancing the interests of the legal profession. The selection of judges is thus only one of many matters receiving attention. Furthermore, a Bar association is neither a political party nor a crusading society. Both of these attributes are needed in the effort to obtain the adoption of the program herein suggested, especially against the experienced and organized political opposition presented in the Chicago situation.

It seems unlikely that the Chicago Bar Association as such would or could successfully champion a thoroughgoing program of reform. Its membership is too large and representative of too many personal points of view ever to present the united front needed to succeed in such a venture. Many of its members are so closely linked to the political hierarchies that any serious attempt to depoliticize the courts would surely bring a violent reaction within the Asso-

ciation. Moreover, the Association's policy of changing its leaders annually, or at least biennially, introduces an element of discontinuity which is fatal to a campaign which may require years to complete. Perhaps the greatest handicap is that political activity is incompatible with the major objects of the Association. If its efforts were occasionally victorious, this type of activity might rise in importance. It could occasionally "point with pride." But when strenuous efforts persistently meet defeat, as in Chicago, the activity becomes an expensive embarrassment.

The organization of an ally of the type suggested would avoid many of these difficulties. This ally would not be too much fettered by professional conventionalities. It would be free to act in any ways desired on its own responsibility. It would be devoted solely to the application, extension, and support of the principle of improving the selection of judges in Chicago. The members of the Association and of the Bar, with the co-operation of the business and civic elements of the community, could initiate and support such a body. It would draw to it support from other elements in the community which now only passively co-operate with the Association. The Association, in fact, could act as the expert adviser to this allied but independent agency, which would be free to engage in propaganda, political, or other activity necessary to secure the adoption of the desired objectives.

In this matter the Association should take a leaf from its own book of experience. The history of the Committee for the Election of Good Municipal Judges in 1906 is suggestive of the type of organization which can be formed and through which the Association can advocate the adoption of its principles of judicial selection.

The rôle of the Bar in judicial selection must be many-sided. Not only must it lead, and prove worthy of such leadership and confidence, but it must prepare the way and establish the goals, and it must rally the forces of democracy to a vigorous defense of their own interests.

BIBLIOGRAPHY

In addition to the sources already cited in the text as being most closely related to the present inquiry, the reader is also referred to the following avenues of information on judicial selection:

CHICAGO AND ILLINOIS

- Chicago Bar Association Record* and special reports of its Committee on Candidates
Chicago Daily News Almanac and Year Book (statistics of judicial elections)
Chicago Legal News
Illinois Law Review
Illinois State Bar Association Proceedings
Reports of local developments are printed in the news and editorial columns of the Chicago metropolitan press.

GENERAL

Invaluable sources of news on developments in judicial selection in the various states are:

- American Bar Association Journal* contains month-by-month accounts of noteworthy trends
American Bar Association Annual Proceedings presents the reports and actions of the national organization and its committees
American Judicature Society Bulletins dealing with specific phases of judicial organization and selection
American Judicature Society Journal, which since its inception in 1917, has chronicled, interpreted, and encouraged improvement in judicial organization and selection. Its files constitute the most consistently complete repository of information on the subject
The periodical publications of the several local and state Bar Associations, also the regional law reviews, are the best channels for tracing developments in specific jurisdictions

For a comprehensive bibliography of the general field, the reader is referred to W. F. Willoughby, *Principles of Judicial Administration* (1929), pp. 607-652.

APPENDIX I

A. COMPUTATION OF THE NUMBER OF VOTES APPARENTLY INFLUENCED BY THE BAR ASSOCIATION

The candidates in each election were divided into four groups:

Republican incumbents
Democratic incumbents
Republican newcomers
Democratic newcomers

This party designation applied of course to *the ticket on which the candidate ran*, rather than to his personal party affiliation; thus a ticket including coalition incumbents would include both parties, but the incumbents on that ticket would be grouped together for this purpose, regardless of their usual differences, because the only thing we are interested in for the moment is in eliminating the vote plurality *between tickets*. Also, the term "incumbent" was considered to include a former incumbent of the court in question, or of another court of the same ranking.

An effort was then made to measure Bar influence *within each of these four classes*, by comparing the average vote of the candidate or candidates indorsed by the Association, with that of those opposed to it. Thus when we compare the votes of Republican incumbents indorsed by the Bar with those of Republican incumbents opposed by the Bar, the difference between them cannot be due to their political alignment, because they are both on the same ticket; and it cannot be due to the prestige of incumbency, because both are incumbents; therefore it is reasonable to assume that the difference in their votes is a difference due to Bar Association influence, except for the factor of personal popularity, which unfortunately cannot be eliminated from our computations, but which by the law of averages should dwindle in importance as the number of cases analyzed is increased.

For the exact method used, assume that there are nine incumbents on a certain ticket. Five of them are indorsed by the Bar, and get an average of 250,000 votes apiece in the election. The other four are not indorsed by the Bar, and their average vote is 225,000. The difference of 25,000, then, is a measure of Bar influence, subject only to the fluctuations of personal popularity, because the major factors of party swing and incumbency have been eliminated at the start. This does not mean that this figure is a *perfect* measure of influence; but the fact that it does show some influence in contest after contest for nearly half a century, and that it shows a degree of influence directly proportional to the prominence of the Bar in that campaign and those immediately preceding, is emphatic proof that in general it is a suggestive index of influence. For example, the 1930 Municipal Court campaign, which was in some ways a contest between Judge John H. Lyle and his Bar Association critics, showed Bar influence affecting only half as many votes as it had reached two years earlier; and then in 1932, with the Lyle issue and its unfavorable publicity for the Bar eliminated, and only favorable mention being given the Bar in most publicity, the measure of influence rose again.

Thus, in the ideal situation we get four figures representing Bar influence:

1. The average vote of Republican incumbents indorsed, minus the average vote of Republican incumbents not indorsed.

2. The average vote of Democratic incumbents indorsed, minus the average vote of Democratic incumbents not indorsed.

3. The average vote of Republican newcomers indorsed, minus the average vote of Republican newcomers not indorsed.

4. The average vote of Democratic newcomers indorsed, minus the average vote of Democratic newcomers not indorsed.

In practice, however, one or more of these figures will usually be unattainable because there was no comparison possible in one or more classes. Thus in a year when all incumbents were able to win Bar indorsement, there would be no opposed incumbents in classes (1) and (2) to compare them to. Or if the Bar refused to approve the newcomers presented by a party in any given year, a comparison would be impossible either in (3) or in (4). And, of course, in elections like that for the Circuit Court in 1921, when the Bar indorsed a whole ticket as such and did not measure individual candidates, there can be no comparison of influence as between individuals.

Where a figure is available in the case of all four classifications, we have taken the average of the four. If there are two comparisons possible, we averaged the two; and if there is only one available, we used the same figure for the year as a whole.

For example, the following list of regular Municipal Court elections for associate justices in several presidential years shows how the average of less than the four ideal measures of influence was used to get a comparative figure for these contests.

ILLUSTRATIVE AVERAGE MAJORITIES FOR BAR-INDORSED CANDIDATES IN:

Municipal Court Election of	(1) Republican Incumbents	(2) Democratic Incumbents	(3) Republican Newcomers	(4) Democratic Newcomers
1912.....	(None Opposed)	(None on Bench)	(None Indorsed)	17,904
1916.....	29,488	(None Opposed)	8,406	(None Indorsed)
1920.....	(None Opposed)	22,997	18,141	42,303
1924.....	28,868	21,188	23,956	13,929

These figures would give general averages for the elections as a whole, as follows:

1912 Bar influence 17,904 votes; column 4 only.

1916 Bar influence 18,947 votes; average of columns 1 and 3.

1920 Bar influence 27,814 votes; average of columns 2, 3, and 4.

1924 Bar influence 21,985 votes; average of all four columns.

B. COMPUTATION OF PARTY PLURALITIES

Party pluralities have been figured in three ways according to the requirements of three different sets of circumstances.

1. In case of a direct party contest between major parties, the party plurality is taken as the average vote for the regular Bench ticket of the winning party, minus the average vote for the regular Bench ticket of the losing party. Vacancies and single offices are not counted. For example, in the Municipal Court campaign of 1932, the twelve Democratic candidates polled a total of 8,023,362 votes, or an average of 668,614 each; and the twelve Republican candidates got a total of 6,706,171 votes, or an average of 558,848. The Democratic plurality was therefore the difference between 668,614 and 558,848, or 109,766 votes, which was sufficient to elect five of the seven Democratic candidates opposed by the Association, despite the fact that the Association itself influenced nearly 90,000 votes in this election.

2. In certain types of election situations involving coalition agreements among the major parties, with Bar indorsement of some of their candidates, but with other Bar candidates being opposed by the combined might of the two major parties (as in 1927 and 1928, also 1887), the party plurality has been figured as the average vote of the coalition candidates *opposed* by the Association. To have included the vote of coalition candidates indorsed would have been to swell the plurality by the votes of the Bar group also; and to have included only the plurality of the coalition ticket over the Bar ticket would have been to discount the height of the wall the Bar sought to hurdle.

3. In a slightly different coalition situation, such as that existing in 1921 or 1929, a coalition of two major party groups defeated a third-party group including one or more candidates indorsed by the Bar, but not including a full ticket. In this situation, the plurality has been figured as the average vote of the N lowest members of the coalition ticket (N being the number on the incomplete ticket including one or more Bar indorsees). Those running highest presumably received the votes of backers of both tickets and hence should not be counted in the plurality. In 1929 the case is additionally complicated by the presence of three candidates on a separate Republican ticket, who polled a large vote, and whose backers distributed their remaining votes among coalition candidates so irregularly as to make Bar influence for the year difficult to determine—but who theoretically do not enter into the matter of the party plurality existing between the winning ticket and the next highest ticket containing Bar nominees.

C. COMPUTATION OF AN "INDEX NUMBER" OF BAR ASSOCIATION INFLUENCE

The "index number" provides a convenient method of indicating the relative strength of candidates indorsed by the Association. The average strength of indorsed candidates is computed as a percentage ratio in terms of the average strength of candidates not indorsed. If each group has the same average strength, the index number is 100.0. If the average of the indorsed groups is higher than that of the unindorsed group, the index exceeds 100.0. If the opposite is true, the number falls below 100.0. The size of the index, in relation to 100.0, thus indicates the relative strength polled by the respective groups.

The index may be computed for any groups of candidates, or for any voting district, for which the comparable information is available. In this study it was desired to analyze separately the figures for a general voting area (city, ward, or precinct) into the four groups outlined under step "A" (i.e., Republican incumbents and newcomers; and Democratic incumbents and newcomers) and then to combine the separate ratios into *one* index number which would correctly characterize the influence of the Association in the particular area.

APPENDIX II

THE FOREIGN-LANGUAGE AND RACIAL PRESS: INTERVIEWS AND ANALYSES

Bohemian.—Files covering the judicial elections of 1927, 1928, and 1930 were scanned with the following results:

In 1927, when the Bar Association advocated the re-election of Judges Thomson, Torrison, and Johnston, the publication carried first-page stories of the Association's activity and of the independent candidacies, on May 21, 25, and 26.

Beginning May 28, however, a series of articles and advertisements were published on behalf of Otto Kerner, a Czech, who occupied one of the places vacated by the independents indorsed by the Bar Association. On the 28th an advertisement, two columns wide and ten inches high, appeared containing Kerner's picture with the caption "Our Friend." "A Chance to elect our friend, etc." The text asked support for the entire "Republican" ticket (the coalition candidates ran in the Republican column) and was signed by Anton J. Cermak, Kerner's political sponsor, and some thirty others. On successive days the publication printed front-page stories about Kerner, and on alternate days the advertisement was repeated.

On election morning the Kerner publicity reached full tide. On page one appeared a one and one-half column story on Kerner, with his picture. Practically all of page five was filled with Kerner testimonial advertisements and with a sample ballot, seven columns wide and ten inches high, marked for the Republican candidates.

During this last week of the campaign there was practically no mention of the independent candidates.

In the Superior Court election of June 4, 1928, the Bar Association, it will be recalled, ran its own ticket and conducted a widespread advertising campaign in both the English and the foreign-language press. Fourteen days before the election, the paper ran on page two a half-column story naming the Bar Association candidates. Eight days later an article on page one again mentioned the Association's nominees; on page nine appeared the photographs of Barbour, Association's candidate, and Gentzel, coalition nominee, for a vacancy. On the next day appeared the Bar Association advertisement. On the day before the election a one-column article and picture of Judge Joseph Sabath appeared on page one, and on page thirteen, pictures of all other candidates. The interesting fact here is that preferred position was given to Judge Sabath, a native-born Czech. Although indorsed in the Bar Association's poll, he had withdrawn from the Association's ticket, preferring to run in the coalition column.

In the November, 1930, election, the paper presented the entire Democratic ticket, no mention being made in the story of the Bar Association's recommendations.

Polish.—Its general policies are determined by the directors of the National Polish Alliance. In the 1928 Superior Court contest the paper published the Bar Association advertisement the same day it appeared in other publications. Articles and pictures of Judges Sabath and Holdom were printed, but no mention of the other candidates was found.

In the November, 1930, election, Edmund K. Jarecki was candidate for re-election as county judge, and John Prystalski was candidate for a Superior Court vacancy. Both were born in Poland. In spite of the fact that fourteen

judicial positions were being filled, the paper for three weeks prior to the election printed little judicial election copy except frequent articles, photographs, and advertisements of Judge Jarecki, and several articles and advertisements for Prystalski. An advertisement for Walter T. Stanton, and a photograph of Judge Horner, who were also candidates, appeared the day before election. No reference to Bar Association indorsements was found during the entire campaign.

German (an evening and a Sunday paper).—These papers are independent and support whatever candidates are considered most worthy. The editor expressed the view that the six-year term and the necessity of seeking re-election inevitably involves the judges in politics. "They're obligated politically before they ever get into office," he said.

The publications' files during the days preceding the judicial elections in 1921, 1927, 1928, and 1930 were scanned. In 1921 the paper supported the coalition slate in preference to "city hall machine control of judges." Judge Scanlan and Rush—as was also Judge Brentano of the opposing alignment—were singled out for special mention, but several editorials argued for support of the coalition ticket. In spite of the fact that the Bar Association was an active leader in the coalition campaign, little mention appears to have been made of it.

The evening paper ran the Bar Association advertisement in the 1928 campaign, but no news mention of the Bar ticket could be found. Two days before the election a two-column story with picture appeared on page two, concerning Judge Gentzel, who was a candidate for a vacancy without Association indorsement.

In the 1930 race the paper published numerous advertisements for individual judicial candidates in both parties. It also ran several large notices for the leading Democratic candidates. In the Sunday paper of October 26, for example, appeared individual notices for Sheffler, Helander, Immenhausen, Luster, Edelman, Carnahan, and Breen—representing practically all parties and factions, and not limited as to nationality. There were also a three-column, eighteen-inch advertisement for the straight Democratic ticket, a one-column marked ballot notice for the straight Republican ticket, and a two-column, eighteen-inch advertisement for Cermak for president of the County Board. Three days later the evening paper repeated the Democratic and Cermak broadsides. Democratic headliners, including Judge Horner, used large amounts of space during the final week, amid a smattering of advertisements from individual judicial candidates of both parties.¹

One gauge of the publications' attitude toward the Bar Association's indorsements appears in the split ballot of candidates recommended by the evening paper the day before election. In a total of twenty-three indorsements, eighteen coincided with those of the Bar Association, with the division even as between the parties. The five points of difference were all in the Republican column.

Jewish.—This publication illustrates how rational attitudes may be modified by expediency. When interviewed, the editor stated: "We value the Bar Association's opinion and are glad to include its indorsement when a candidate has received it. We know they know a lot more about such things than we do." The paper's files, however, contained numerous illustrations of class appeals made in the interest of candidates who "live on the street" or have racial ties to the group among which it circulates. Two specific instances will be cited to show how candidates from whom the Bar's indorsement was withheld were played up on considerations having little or no relation to their fitness for judicial office.

¹When asked how many election advertisements of individual judges his paper could get, one foreign-language paper editor replied, "Not many—and whenever they want one, they have to pay cash!"

In the September 15 primary, 1926, one Max Schulman sought the Republican nomination for associate judge of the Municipal Court. Concerning his qualifications the Association had said: "This candidate is commended for his activity in social service, but the reports submitted to this committee as to his qualifications for judicial office are conflicting." The paper of September 3 contained a one-column eulogy by "Prof. S. A. Hoffman," in English, entitled "And His Name Is Max." It reviewed the candidate's "ceaseless and tireless efforts on behalf of our people," and told how he had "kept aflame the Jewish spirit in our community." It recalled how during the war he "worked like a Trojan in the liberty loan campaigns, helping our boys over there to win their gigantic tasks. He worked day and night to save our tottering institutions in Palestine. . . . He kept intact the many Jewish organizations of Chicago who were so frightfully affected by the war conditions. . . . Go to the polls," the article concluded, "Perform your duty as an American citizen by voting, and as a fellow Jew of Max Schulman, by voting for him." Later issues reiterated the appeal.

In 1927, a one and one-half column article from the pen of Professor Hoffman reviewed "The June Judicial Election." It made no mention of the Thomson-Torrison-Johnston independent candidacies or of the efforts of the Bar Association to re-elect these three incumbents, one of whose places on the coalition slate was taken by Michael Feinberg, a member of the race. The article supported the coalition ticket as a whole, but several paragraphs were devoted to glowing accounts of Candidate Feinberg (whose election the Bar Association opposed) and his close personal association with Judge Kickham Scanlan, who eight years before had appointed Mr. Feinberg his master-in-chancery.

This publication contained the largest total amount of advertising from individual candidates in both parties who utilized its pages to advance their personal claims. This circumstance probably is accounted for by the enterprise of the publisher in soliciting such advertisements; it also represents, however, a recognition on the part of the candidates of the value of cultivating sentiment in their behalf among the paper's clientèle. Most of these advertisements were one column wide and contained the candidate's photograph, with a brief reading notice.

In general there seemed to be no special mention in the news columns of the paper of the candidates taking advertising space. It was noticeable, however, that in certain instances such special attention was accorded. The instances of Candidates Schulman and Feinberg have already been cited.

In 1927 special consideration was also accorded Judge Harry Fisher, who is a member of the race, and Judge John Caverly, who a few months before had presided at the famous Loeb-Leopold trial. In the case of Judge Caverly, a write-up in Yiddish, favoring his re-election, appeared on June 3. Again on June 5, the day before the election, another article, two-thirds of a column in length, appeared in his behalf, and also there was an indorsement of Judge Caverly in English in an open letter signed by six persons prominent in the racial community.

The fact of special interest in this is that there was found no mention of the Bar Association in the first two of these three election campaigns, and that in the third the only such mentions discovered in the columns of the paper were in a paid advertisement which appeared during the Superior Court election campaign of 1928, and in a news item the day before the election. This news item mentioned merely "the great efforts of the Bar Association

²*Report of Committee on Candidates, September 3, 1920, p. 11.*

against the coalition," which ticket the paper had indorsed, and the fear that "at least one member of the Bar ticket will be elected."

Italian.—The person in charge was interviewed as follows:

"Is your paper interested in judicial elections?"

"Oh, yes, very deeply."

"Do you go by the Bar Association recommendations?"

"Oh, no, of course not. We don't go by recommendations; we take the best man!"

The speaker appeared to resent the suggestion that the paper seek advice from any non-Italian source.

Only current files were available. At the time of the interview the Thompson-Lyle-Albert primary contest for the mayoralty had recently been in progress. A search of the pages of the paper for a twelve-day period preceding the primary gave the impression that the paper's idea of the best news story was the one most bulging with applause for the candidate who had granted the most favors to the Italian race. Mayor Thompson was thus lauded as "Il Battagliero Sindaco di Chicago," while Judge John Lupe and former Municipal Judge Bernard P. Barasa, a leader of the Thompson faction, were also mentioned as attending a banquet given by the Mayor to five thousand Italians in Hotel Sherman. Four days before the primary, a fifteen-inch advertisement appeared for Thompson, signed by Judges Barasa, Lupe, and Shاربoro.

In an article two days before the election, candidates Albert and Lyle, who opposed Mayor Thompson, were dismissed as being candidates of the *Daily News* and *Chicago Tribune*, respectively. On primary day the paper gave its own particular reason for opposing Judge Lyle, as follows: "It would seem a matter of shame how many will vote for the candidate of a journal which has for its program the insulting and defaming of the Italian nationality."

While this election did not deal with judicial candidacies, perhaps these specimens, considered in conjunction with the editorial policy enunciated, will indicate that no candidate would likely be supported merely because he had been indorsed by the Bar Association.

³In the November, 1926, campaign, another periodical, the *Chicago Jewish Chronicle* (issue of October 29), expressed an extremely hostile attitude toward the Association thus:

"The Chicago Bar Association has proven on many occasions that it is a hot-bed of anti-Semitism. It has never indorsed a Jew for office no matter how fit and able and qualified he may be. It simply goes against their grain. Judge Joseph B. David, one of our ablest, most fearless and conscientious jurists, was not indorsed when he was running for re-election, though he made an exceptionally fine judge. The same is true of Judge Hugo Pam, also an outstanding jurist who was not indorsed by that self-appointed body because the judge happens to be a son of the covenant. And so all along the line.

"They could not possibly overlook and ignore Judge Henry Horner, who has gained a nation-wide reputation for his expertness in Probate Law and procedure, yet they did not indorse him as they did Judge Jarecki or even lesser lights. The Chicago Bar Association as it is at present constituted is a travesty on the legal fraternity of our city; is a joke and a hokum, and a nest of anti-Semitism of the most virulent kind. The sooner the people of Chicago will find out who they are and the kind of politics they play, the sooner they will repudiate them and rank them on the same footing as the graft-ridden 'Better Government Association.'"

"One reason for the paper's support of Mayor Thompson appears in the fact that in 1927 he had appointed its publisher, Oscar Durante, a trustee of the Board of Education.

⁵*L'Italia*, February 24, 1931.

Swedish.—The attitude of this paper differs from the viewpoints of the other foreign-language papers studied, with the exception of the German papers, in that it evidently endeavors to give both sides of a question and to weigh the arguments of each side.

The paper subordinates political matters to other types of news. The editor declared: "We do not claim to be able to deliver the vote of our people. It would be an empty claim, because our people are very independent."

He also frankly expressed the publication's attitude toward the Bar Association as follows: "We always read the Bar Association's recommendations. We do not always go by them, any more than some of our influential lawyer friends do, but we respect them, and we are paying more attention to them now than we used to."

The files were studied for the elections of 1921, 1927, 1928, 1929, and 1930. The conservative way in which the publication handles political news is shown by the fact that except during the 1930 campaign, there were few political advertisements of any type. Articles relating to political matters were invariably short, and contained a minimum of ballyhoo of individual candidates. The paper's independent attitude is shown by its support of the Democratic coalition ticket in 1921 (it is normally an independent Republican paper), with the reservation that it supported Judges Holdom and Baldwin, whom it regarded as good men on the wrong side. Specific editorial mention was given to Candidates John A. Swanson and Oscar Torrison as the two contributions of the Scandinavian people to the judicial ticket; their biographies were also printed. The same consideration was extended to these candidates again in 1927, but at this time the paper took no sides, which is interesting in view of the fact that Judge Torrison was one of the three candidates who were denied a place on the coalition ticket, and that he was making his campaign, along with Judges Thomson and Johnston, as an independent, with the active support of the Bar Association.

News incidental to the Superior Court election in 1928 showed how certain types of activity result in notice. On page thirteen of the May 30 issue appeared a half-column report of a meeting held before a Swedish organization in Lakewood in behalf of the candidates appearing on the Bar Association ticket. The article included the names of the candidates, the names of the officers of the Bar Association, and a résumé of arguments for the Bar ticket. On page seven of the same issue appeared the Association's paid advertisement.

The account of this meeting was the only instance found of an incidental news story inspired by the Bar Association campaign.

In the 1929 campaign brief mention was made of Bar Association activity. No candidates received individual mention, however, and the paper published no recommendation.

During the Municipal Court campaign of 1930, the judicial recommendations of the Swedish American Club were published, and several accounts were given of Swedish political meetings, apparently without any mention of Bar Association activity. Judges Harry Olson and William E. Helander were accorded editorial mention.

The Chicago Defender (Negro).—In the 1933 campaign this publication gave several specific indications of its hostile attitude toward the Chicago Bar Association. On May 13, for example, the *Defender* printed a two-column article, "Republican Leaders Hurl Defiance at Bar Group," declaring that the Chicago Bar Association has never "been able to find the proper qualifications in any member of our group"⁶ and cited "its discriminatory conduct on the question of

⁶It had failed to indorse Harris B. Gaines, Negro candidate on the Republican ticket for the Circuit Court.

admission to membership . . . by members of our race," and continued: "Predicated upon this putrid and sinister manifestation of racial prejudice, rests the foundation upon which the real sincerity of this organization is built. The inability of the managers of the Chicago Bar Association to remove from its legal optics the veil of hate, prejudice, and bigotry robs its opinions of that universal respect with which it would otherwise be accorded."

Two weeks later the *Defender* explained the Association's opposition to the re-election of Judges Feinberg and Klarkowski as being motivated by Robert E. Crowe's political regard for the Negro race. The article was headed:

"Voters Not Deceived by Antics of Bar Association."

It cited the failure of the Association "to indorse a colored lawyer, whatever his ability may be, for judicial honors" and gave a long defense of Robert E. Crowe as a friend of the Negro. It advised "the colored citizens of Cook County to regard this attack (upon Feinberg and Klarkowski), coming from the source in question, as being a vicious attempt, long prevalent among certain men and institutions, to destroy the influence of any public official who shows a disposition to give proper respect and recognition to members of our Race."

In a final editorial appearing two days before the election, the *Defender* again called upon the Race to support Gaines, as the candidate of the (Negro) Cook County Bar Association. It took a last fling at the Chicago Bar Association, declaring: "We cannot hope to be properly advised by the Chicago Bar Association, an institution that has never found it convenient to indorse a member of our Race for judge or even to admit one to membership in that body. The very principles on which the Chicago Bar Association is founded prevent it from acting as an unbiased adviser in cases involving our interest."

An advertisement in the same issue for Judge Denis J. Normoyle, a Democrat, whom the Negro Bar Association had indorsed for re-election, urged Negroes to support him "because of the fact that he is the one judge of either party who had the courage to appoint a colored lawyer as receiver for the court. . . . The fact that the Chicago Bar Association did not indorse Judge Normoyle for re-election is significant in view of the above statement . . . and we as a group would be ungrateful, to say the least, if at this particular time we fail to support those judicial candidates that have at all times proved themselves to be unswerving in their belief of equality before the law for all."

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